



RELEASE - TRANSMISSION OF REVISED MATERIAL TO BE INCORPORATED INTO THE FEDERAL (EEOICPA) PROCEDURE MANUAL: CHAPTER 2-1600 RECOMMENDED DECISIONS, CHAPTER 2-1700 FAB REVIEW PROCESS, CHAPTER 2-1800 FAB DECISIONS, AND CHAPTER 2-1900 REOPENING PROCESS.

EEOICPA TRANSMITTAL NO.10-02

October, 2009

EXPLANATION OF MATERIAL TRANSMITTED:

- These four chapters are transmitted for placement in the new Unified Procedure Manual (PM) binder. These chapters consist of the consolidation of updated information and guidance as it pertains to the Program's administration of Parts B and E of the EEOICPA.
- New chapter 2-1600 replaces Part B chapter 2-1100, new chapters 2-1700 and 2-1800 replace Part B chapter 2-1300 and Part E chapter E-1100, and new chapter 2-1900 replaces Part B chapter 2-1400.
- These chapters incorporate changes that have arisen since last publication of the PM, including the following:
 - Chapter 2-1600 has been revised to clearly instruct claims staff to issue recommended decisions to all parties of a claim.
 - Chapter 2-1800 instructs FAB staff to issue Final decisions to all parties to a claim.
 - Chapter 2-1900 instructs claims staff to issue reopening decisions to all parties to a claim.

- o Chapter 2-1900 incorporates procedures from Bulletin 09-01, delegating authority to District Directors to reopen certain claims.

Rachel P. Leiton

Rachel P. Leiton
Director, Division of
Energy Employees Occupational Illness Compensation

FILING INSTRUCTIONS:

File this transmittal behind Part 1 in the front of the new Unified Federal (EEOICPA) Procedure Manual.

Distribution: List No. 3: All DEEOIC Employees
List No. 6: Regional Directors, District Directors, Assistant District Directors, National Office Staff, and Resource Center Staff.

SAMPLE REMAND ORDER COVER LETTER

Date

Claimant Name
Address

Last 4 Digits of File Number:

Dear Claimant:

Enclosed please find the Remand Order concerning your claim for compensation under the Energy Employees Occupational Illness Compensation Program Act.

Please note that the remand order is directed to the EEOICP district office. Unless you are contacted by that office for additional information, you are not required to take any action at this time. I regret any inconvenience caused to you by this remand.

Your file is being returned to the district office. Future correspondence, inquiries, or telephone calls may be directed to the district office. Thank you for your cooperation.

Sincerely,

Hearing Representative
Final Adjudication Branch

CERTIFICATE OF SERVICE

I hereby certify that on _____, a copy of the Notice of Final Decision(or Remand Order) was sent by regular mail to the following:

Claimant Name
Claimant Address

Hearing Representative
Final Adjudication Branch

Superseded

SAMPLE ACKNOWLEDGMENT LETTER, REVIEW OF WRITTEN RECORD

Date

Claimant Name and Address

Employee:

Claimant:

Last 4 Digits of Claim Number:

Dear Claimant Name:

On [date objection letter received], the Final Adjudication Branch (FAB) received a letter of objection dated [date of letter] stating objections to the (district office) district office's recommended decision of (date of RD) which recommends denial of your claim for benefits under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA).

The objections, along with the information in the file, will be carefully considered and included in our final decision. If you have any additional evidence that you wish to be considered, it must be received by the FAB within 20 calendar days of this letter. After that date, a review of the written record will be made and a final decision will be issued. Any evidence you wish to be considered should be submitted to:

U.S. Department of Labor
DEEOICP
Final Adjudication Branch
P.O. Box XXXX
City, State Zip Code

If you wish, you may submit such evidence via fax to (xxx) xxx-xxxx. Please ensure that your file number shown above is noted on any documentation you send to this office.

Sincerely,

Hearing Representative
Final Adjudication Branch

SAMPLE ACKNOWLEDGMENT LETTER, HEARING

Dear Claimant Name:

The Final Adjudication Branch of the Energy Employees Occupational Illness Compensation Program has received and docketed your letter dated February 1, 2008, objecting to the recommended decision of the DISTRICT OFFICE dated December 11, 2007. Your request for a hearing has been noted and a hearing will be scheduled.

Please be advised that your notification of the time, date and location of your hearing will be mailed at least 30 days prior to the date set for your hearing. The hearing will be conducted within reasonable distances or via phone. At the hearing, you will be provided the opportunity to present your objections to the recommended decision, along with any additional evidence you would like to present. This testimony will be made under oath and transcribed by a court reporter for inclusion in your case file. If there is more than one claimant involved in this case, each is allowed to participate in the hearing. You may designate an attorney or other individual to be present and to represent you at the hearing. You are not, however, required to have a representative present at the hearing.

If you prefer, you may have a hearing by telephone instead of in person. You should request that in writing as soon as possible so we can make appropriate arrangements. You may send that request by fax to (xxx) xxx-xxxx - ATTN: Hearings Unit. Any additional correspondence should be directed to:

U.S. Department of Labor, EEOICP
Attn: Final Adjudication Branch
PO Box xxxx
City, State ZIP

Thank you for your cooperation.

Sincerely,

Program Specialist

SAMPLE HEARING NOTICE TO CLAIMANT WHO FILED AN OBJECTIONRE: NOTICE OF HEARING

Dear Claimant Name:

A hearing has been scheduled concerning the above referenced claim under the Energy Employees Occupational Illness Compensation Program Act of 2000, as amended, 42 U.S.C. § 7384 et seq. (EEOICPA or the Act). The hearing will begin promptly at TIME AM/PM on DAY, DATE at the following location:

BUILDING NAME
STREET ADDRESS
CITY, ST ZIP-CODE
(XXX) XXX-XXXX (for directions only)

Please bring a photo I.D. so that you may be admitted into the building.

The specific issue to be addressed at the hearing: [If it is a Part E hearing request: The issue to be addressed at the hearing is whether you are entitled to compensation and benefits under Part E of the EEOICPA. If it is a Part B and Part E hearing request: The issues to be addressed at the hearing are whether you are entitled to compensation and benefits under Part B and Part E of the EEOICPA.]

You must inform me of any person other than your authorized representative that will be attending the hearing with you not later than XXXXXX (1 week prior to the date of the hearing). Please be aware that in such circumstances, all claimants who have requested this hearing must sign a "WAIVER OF RIGHTS TO CONFIDENTIALITY." Additionally, I will need to determine whether proper room arrangements can be made to accommodate the number of people expected to attend the hearing.

Please be advised that the security requirements of the XXXXXXXX (Federal Building) require me to provide a list of all attendees. Anyone not on the list will not be admitted to the building and will not be able to attend the hearing.

The hearing is an informal process, and I am not bound by common law or statutory rules of evidence or by technical or formal

rules of procedure. During the hearing, you may state your arguments and present new written evidence and/or testimony in support of the claim. Oral testimony will be made under oath or affirmation and is recorded. The recording of the hearing proceedings is then transcribed and placed in the record. You will be provided a copy of the hearing transcript. You or anyone else present may not make your own video or audio recording of the hearing.

I determine the conduct of the hearing and may terminate the hearing at any time I determine that all relevant evidence has been obtained or because of misbehavior on the part of the claimant and/or representative, or any other persons in attendance at or near the place of the hearing.

[Add this paragraph if the hearing concerns the POC] Since the issues raised relate to the dose reconstruction process, it is important for you to know that the National Institute for Occupational Safety and Health (NIOSH) has full authority under the regulations to complete the dose reconstruction as prescribed in its rules. The dose reconstruction is used by the Department of Labor to determine the probability that the claimed cancer is related to employment at a covered facility. During the hearing, I am not authorized to address NIOSH methodology and therefore will not be in a position to discuss the way in which NIOSH prepares the dose reconstruction. You may present your objections at the hearing, including any evidence or information you wish to submit and all arguments, evidence and information will be entered into the record. However, I can discuss only issues of a factual nature regarding the information you provided to NIOSH, and which that agency used to perform the dose reconstruction.

I have attached additional information regarding the hearing procedures for your review. If you have any questions concerning these procedures, please feel free to contact me at (xxx) xxx-xxxx.

Sincerely,

Hearing Representative
Final Adjudication Branch

Enclosure

HEARING PROCEDURES

BEFORE THE DATE OF THE HEARING: Before the date of the hearing, please submit any additional evidence that you wish me to consider. However, if such evidence is submitted on the date of the hearing or within thirty (30) days after the hearing, it will still be carefully considered and made part of the record. You must notify me at least one (1) week prior to the date of the hearing if persons other than claimants involved with the case, to include any properly appointed authorized representatives, will be attending the hearing. Please be aware that in such circumstances, all claimants who have requested this hearing must sign a "WAIVER OF RIGHTS TO CONFIDENTIALITY." Additionally, I will need to determine whether proper room arrangements can be made to accommodate the number of people expected to attend the hearing.

The hearing is an informal process, and I am not bound by common law or statutory rules of evidence or by technical or formal rules of procedure. During the hearing, you may state your arguments and present new written evidence and/or testimony in support of the claim. Oral testimony will be made under oath or affirmation and is recorded. The recording of the hearing proceedings is then transcribed and placed in the record. You will be provided a copy of the hearing transcript. You may not make your own video or audio recording of the hearing.

NO POSTPONEMENT WILL BE GRANTED UNLESS EXTREMELY COMPELLING CIRCUMSTANCES EXIST: If you are hospitalized for a reason which is not elective, or where the death of your parent, spouse, or child prevents attendance at the hearing, a postponement may be granted upon proper documentation. Please contact the Final Adjudication Branch at (XXX) XXX-XXXX, if an emergency arises. If a postponement cannot be granted, the request for a hearing will automatically convert to a request for a review of the written record. If you do not appear at the scheduled time and place, the request for a hearing will automatically convert to a request for a review of the written record.

WITHDRAWAL OF REQUEST FOR HEARING: At any time after requesting a hearing, you can request a change to review of the written record by making a written request to the Final Adjudication Branch. Once such a change is made, no further opportunity for a hearing will be provided, and I will review the written record.

HEARING BY TELEPHONE: If you would like to have a hearing by telephone, please contact the Final Adjudication Branch at (XXX) XXX-XXXX. Any testimony presented at the telephone hearing will be made under oath or affirmation and the testimony will be recorded by a court reporter and made part of the record. Telephone hearings can not be conducted on cell phones.

REPRESENTATION: You may designate a person to represent you to help you prepare your case and/or present your case at the hearing. Your representative can be an attorney, but he or she need not be. There are rules concerning the maximum fee an attorney can charge you.

AFTER THE HEARING: I will furnish a transcript of the hearing to you (at no charge) within a few weeks after the hearing. You will then have twenty (20) days from the date it is sent to submit any comments to me. You will also have thirty (30) days after the hearing is held to submit additional evidence or argument, unless an extension is granted. Only one such extension may be granted. After the hearing, I will study the record and make findings based on the evidence, including testimony taken at the hearing, and issue a written decision.

SAMPLE HEARING NOTICE TO CLAIMANT WHO DID NOT FILE AN OBJECTION

Dear Claimant Name:

A hearing has been scheduled concerning the above referenced claim under the Energy Employees Occupational Illness Compensation Program Act of 2000, as amended, 42 U.S.C. § 7384 et seq. (EEOICPA or the Act). The file indicates that you did not file an objection to the recommended decision of the district office. However if you wish, you may participate in the hearing. The option to participate by telephone is available, but you must let me know immediately. The hearing will begin promptly at TIME AM/PM on DAY, DATE at the following location:

BUILDING NAME
STREET ADDRESS
CITY, ST ZIP-CODE
(XXX) XXX-XXXX (for directions only)

Please bring a photo I.D. so that you may be admitted into the building.

The specific issue to be addressed at the hearing: [If it is a Part E hearing request: The issue to be addressed at the hearing is whether you are entitled to compensation and benefits under Part E of the EEOICPA. If it is a Part B and Part E hearing request: The issues to be addressed at the hearing are whether you are entitled to compensation and benefits under Part B and Part E of the EEOICPA.]

You must notify me at least one (1) week prior to the date of the hearing if persons other than claimants involved with the case, and a properly appointed authorized representative, will be attending the hearing. Please be aware that in such circumstances, all claimants who have requested this hearing must sign a "WAIVER OF RIGHTS TO CONFIDENTIALITY."

Additionally, I will need to determine whether proper room arrangements can be made to accommodate the number of people expected to attend the hearing.

Please be advised that the security requirements of the XXXXXXXX (Federal Building) require me to provide a list of all attendees. Anyone not on the list will not be admitted to the building and will not be able to attend the hearing.

The hearing is an informal process, and I am not bound by common law or statutory rules of evidence or by technical or formal rules of procedure. During the hearing, you may state your arguments and present new written evidence and/or testimony in support of the claim. Oral testimony will be made under oath or affirmation and is recorded. The recording of the hearing proceedings is then transcribed and placed in the record. You will be provided a copy of the hearing transcript. You or anyone else present may not make your own video or audio recording of the hearing.

I determine the conduct of the hearing and may terminate the hearing at any time I determine that all relevant evidence has been obtained or because of misbehavior on the part of the claimant and/or representative, or any other persons in attendance at or near the place of the hearing.

[Add this paragraph if the hearing concerns the POC] Since the issues raised relate to the dose reconstruction process, it is important for you to know that the National Institute for Occupational Safety and Health (NIOSH) has full authority under the regulations to complete the dose reconstruction as prescribed in its rules. The dose reconstruction is used by the Department of Labor to determine the probability that the claimed cancer is related to employment at a covered facility. During the hearing, I am not authorized to address NIOSH methodology and therefore will not be in a position to discuss the way in which NIOSH prepares the dose reconstruction. You may present your objections at the hearing, including any evidence or information you wish to submit and all arguments, evidence and information will be entered into the record. However, I can discuss only issues of a factual nature regarding the information you provided to NIOSH, and which that agency used to perform the dose reconstruction.

I have attached additional information regarding the hearing procedures for your review. If you have any questions concerning these procedures, please feel free to contact me at (xxx) xxx-xxxx.

Sincerely,

Name of Hearing Representative
Hearing Representative
Final Adjudication Branch

Enclosure

Superseded

WAIVER OF RIGHTS TO CONFIDENTIALITY

I, _____, (File Number _____),
residing at _____, am aware that persons
other than claimants involved in the above case or their
authorized representative may be present at a hearing convened
under the Energy Employees Occupational Illness Compensation
Program Act (EEOICPA) on _____, at _____ AM/PM in
_____, in the State of _____.

I have requested the presence of these persons, or accept
their presence at this proceeding, and I hereby waive any right
to confidentiality of records, documents or other materials
contained in files maintained by the Office of Workers
Compensation Programs and disclosed during the hearing. I
further waive any right to privacy under the Privacy Act of 1974
in the disclosure of records, documents or other materials
related to my claim that may be released during the course of
the hearing.

Acknowledged and signed this _____ day of _____, 2009.

(signature)

WAIVER OF RIGHTS TO CONFIDENTIALITY (MEDIA)

I, _____, (File Number _____) residing at _____, am aware that representatives of the print and/or broadcast media may be present at a hearing convened under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) on _____, at _____ AM/PM in _____, in the State of _____.

I have requested the presence of these persons, or accept their presence at this proceeding, and I hereby waive any right to confidentiality of records, documents or other materials contained in files maintained by the Office of Workers Compensation Programs and disclosed during the hearing. I further waive any right to privacy under the Privacy Act of 1974 in the disclosure of records, documents or other materials related to my claim that may be released during the course of the hearing.

Acknowledged and signed this _____ day of _____, 2009.

(signature)

SAMPLE HEARING SCRIPTCONVENING THE HEARING**I. OPENING, AUTHORITY, AND NARRATIVE**

We will now open the record. Today is _____, and it is _____AM/PM. My name is _____ and I have been designated to conduct this hearing and to receive the objections of EMPLOYEE/CLAIMANT. (At this point indicate whether or not claimant is represented by counsel or other authorized representative). This case is identified under claim number xxx-xx-xxxx and carries docket number xxxx-2008.

This hearing is convened under the Energy Employees Occupational Illness Compensation Program Act (I will make future references to it as the Act), and is governed by the provisions of Title 20, Section 30.314 of the Code of Federal Regulations. These regulations provide claimants with the right to object to a recommended decision of a district office. While this hearing is informal and not governed by rules of evidence, I will administer an oath or affirmation to every person providing testimony today. I will first review the history of your claim as it appears in the written record. You may then present testimony, argument, and any additional evidence addressing the merits of your claim.

On DATE OF FILING, you submitted an EE-(1 or 2) form to the NAME OF LOCATION district office claiming benefits under the Act. On your EE-1/2 form, you claimed LIST FORM OF CANCER as the claimed condition related to employment under the Act. You also submitted an EE-3 form indicating employment at LIST FACILITY, DATES OF EMPLOYMENT AND COVERED PERIOD FOR FACILITY. You submitted evidence establishing your employment at NAME FACILITY and submitted BRIEFLY OUTLINE MEDICAL EVIDENCE establishing a cancer diagnosis.

Since YOUR/THE EMPLOYMENT did not qualify YOU/THE EMPLOYEE for membership in the special exposure cohort, the DISTRICT OFFICE forwarded your claim file information to the National Institute for Occupational Safety and Health (hereinafter referred to as NIOSH) for radiation dose reconstruction. The district office undertook such an action pursuant to the instructions set out in the regulations governing the Act. The Act and implementing

regulations mandate that when a claimant with covered employment establishes a cancer diagnosis, NIOSH will prepare a radiation dose reconstruction. The Department of Labor then applies a formula to the dose reconstruction in order to determine whether the employee's cancer is as least as likely as not related to the covered employment.

NIOSH provided a report of the dose reconstruction and DISTRICT OFFICE found that there was a % probability that YOUR/THE EMPLOYEE'S cancer was causally related to employment under the Act. As such, it was determined that the cancer was not found to be at least as likely as not related to employment under the Act. Accordingly, the DISTRICT OFFICE issued its recommended decision on DATE OF RD recommending denial of your claim for benefits under the Act.

II. STATEMENT OF OBJECTION AND NIOSH DISCLAIMER

On DATE OF OBJECTION, you filed your objection to the recommended decision and requested an oral hearing. You have objected specifically that the NIOSH dose reconstruction failed to show enough exposure so the DO could find that YOUR/THE EMPLOYEE'S cancer was at least as likely as not related to YOUR/THE EMPLOYEE'S employment.

At this time I would like to say something about the NIOSH dose reconstruction. NIOSH is given full authority under the regulations that govern the Act to conduct the dose reconstruction used by the Department of Labor to determine the probability that a cancer is related to employment. I am, therefore, not in a position to discuss the way in which NIOSH goes about preparing the dose reconstruction report. However, I can discuss issues of a factual nature regarding the information you provided to NIOSH, and challenges to the application of NIOSH's methodology. I am here to take your objections and enter them into the evidence of record, but I am not permitted to consider objections to NIOSH methodology at this time.

III. ADMINISTER OATH AND TAKE EVIDENCE

As stated previously, while the hearing is designated as an informal process, anyone giving testimony today is required to do so under Oath. Mr./Ms. Claimant, will you please raise your hand? (Administer Oath: "Do you swear/affirm to tell the truth

in the testimony you are about to give in these proceedings today?"

Mr./Ms. Claimant, will you please, for the record, state your full name and address, and then proceed to give your testimony for the record.

AT THIS POINT, ALLOW THE CLAIMANT TO GIVE ORAL TESTIMONY AND ENTER SUCH DOCUMENTS AS THE CLAIMANT MAY DESIRE INTO THE RECORD AS EVIDENCE. IDENTIFY AND MARK EACH AND EVERY EXHIBIT AND NUMBER EACH EXHIBIT SEQUENTIALLY.

IV. CLOSING

Before closing, I will advise Mr./Ms. Claimant of what will transpire from this date forward. These proceedings will be transcribed, and a copy of the transcript will be provided to you. I will leave the record open for another 30 days for you to submit any additional evidence. You also have 20 days from the date of mailing of the transcript to offer any corrections or comments on the transcript. Any such additional evidence or comments will be included in the record and considered, along with your hearing testimony and all of the evidence already in the record, prior to issuance of the final decision. If there is no other testimony to be given in this matter, I will close the hearing. It is now ____ A.M/P.M. and this hearing is closed.

SAMPLE COMPLETE FINAL DECISION

Dear Claimant Name:

Enclosed please a Final Decision on your claim for compensation under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA). Your claim under Part E has been approved for \$125,000.

I have enclosed the Acceptance of Payment form (EN-20), which is required before the Office of Workers' Compensation Programs can issue payment to you. You must complete the form in permanent ink and there can be no cross outs or other marks. Do not use white out or correction tape. Any alteration of the form will result in it being rendered unusable for purposes of issuing payment. If you make a mistake or need another form, please contact the district office handling your claim. You must submit the form with an original signature. Faxes or other copied version of the EN-20 is not acceptable. A second copy of the form is attached in case a mistake is made. Only one form needs to be returned. Please check with your financial institution before returning the form to us to verify the routing number and your account number so that your money arrives promptly and to the correct account.

Please email the completed and signed original EN-20 to:

U.S. Department of Labor
DEEOIC, District Office
P.O. Box XXXX
City, State ZIP

Please be advised that the final decision on your claim may be posted on the agency's website if it contains significant findings of fact or conclusions of law that might be of interest to the public. If it is posted, your final decision will not contain your file number, nor will it identify you or your family members by name.

Any future correspondence, inquiries, or telephone calls should be directed to the (District Office) district office. Thank you for your cooperation.

Sincerely,

Hearing Representative
Final Adjudication Branch

Superseded

EMPLOYEE: [Name]
CLAIMANT: [Name]
FILE NUMBER: [Number]
DOCKET NUMBER: [Number]
DECISION DATE: [Date]

NOTICE OF FINAL DECISION

This is the decision of the Final Adjudication Branch (FAB) concerning your claim for compensation under the Energy Employees Occupational Illness Compensation Program Act of 2000, as amended (EEOICPA or the Act), 42 U.S.C. § 7384 *et seq.* For the reasons set forth below, the FAB accepts and approves your claim for compensation under Part E.

STATEMENT OF THE CASE

On October 5, 2001, you filed a Form EE-2 (Claim for Survivor Benefits under the EEOICPA) with the Department of Labor (DOL). You also filed a Form OWAL (Request for Review by Medical Panels under the EEOICPA) with the Department of Energy (DOE). You filed these claims as the surviving spouse of [Employee], based on the condition of lung cancer. You provided medical evidence including a pathology report dated February 11, 1994, diagnosing [Employee] with poorly differentiated large cell carcinoma of the right lung.

A representative of the DOE verified that [Employee] was employed at the Hanford site, a DOE facility, as a nuclear process operator from December 16, 1954 to July 5, 1957, and from October 1, 1962 to April 30, 1993.

You submitted a copy of a marriage certificate showing you and [Employee] were married on April 4, 1956. You also submitted a copy of the employee's death certificate which showed that he died as a result of lung cancer, and that you were his surviving spouse at the time of his death on July 14, 1997.

On January 19, 2006, the FAB issued a final decision under Part B of the Act to deny your claim for benefits, finding that the employee's lung cancer was not "at least as likely as not" (a 50% or greater probability) caused by radiation doses incurred while he was employed at the Hanford site.

In developing your claim under Part E, the Seattle district office analyzed the evidence of record and reviewed DOL's Site Exposure Matrices (SEM), in an effort to determine the type of toxic substances the employee could potentially have been exposed to while working at the Hanford site as a nuclear process operator. SEM was also searched to determine whether there was a possible association between the toxic substances the employee was exposed to and his lung cancer.

Source documents used to compile SEM establish that the employee's occupational category as nuclear process operator, and/or work location in Area 200, at the Hanford site likely exposed him to toxic substances (arsenic, beryllium, cadmium, cadmium oxide, chromic acid, chromium, chromium III, sodium chromate, sulfuric acid and vinyl chloride space (Monomeric)), that are known to cause lung cancer.

On November 20, 2006, the district office forwarded your file, including the information obtained from SEM, to a District Medical Consultant (DMC) for a medical opinion of the claim. On November 26, 2006, the DMC opined that it is "at least as likely as not" that [Employee]'s exposure to arsenic, beryllium, cadmium, cadmium oxide, chromic acid, chromium, chromium III, sodium chromate, sulfuric acid and vinyl chloride space (Monomeric) contributed to his death from lung cancer.

Based on the DMC opinion and the evidence of record, the district office concluded that there was sufficient evidence of exposure meeting the "at least as likely as not" criteria that toxic exposure at a DOE facility was a significant factor in aggravating, contributing to, or causing the employee's death.

On December 8, 2006, the Seattle district office issued a recommended decision to accept your claim based on the condition of lung cancer and to award you compensation in the amount of \$125,000.00 under Part E.

The evidence of record includes a letter dated December 13, 2006, in which you indicated that neither you nor your spouse have filed a lawsuit or received a settlement relevant to the claimed exposures. You also indicated that you and your spouse have never filed for or received any payments, awards or benefits from a state workers' compensation claim in relation to the claimed condition, or pled guilty to or been convicted of any charges connected with an application for or receipt of federal or state workers' compensation. Further, you indicated that your spouse had no minor children or children incapable of self-support, who were not your natural or adopted children, at the time of his death.

After considering the evidence of record, the FAB hereby makes the following:

FINDINGS OF FACT

1. On October 5, 2001, you filed a claim for survivor benefits with DOL and DOE under the EEOICPA.
2. You are the surviving spouse of [Employee] and were married to him for at least one year immediately prior to his death.
3. [Employee] was employed at the Hanford site, a covered DOE facility, as a nuclear process operator, from December 16, 1954 to July 5, 1957, and from October 1, 1962 to April 30, 1993.
4. The employee was diagnosed with lung cancer on February 11, 1994 after starting work at a covered DOE facility.
5. Previously the FAB issued a final decision under Part B of the Act to deny your claim for benefits, finding that the employee's lung cancer was not "at least as likely as not" (a 50% or greater probability) caused by radiation doses incurred while employed at the Hanford site.
6. On November 26, 2006, the DMC opined that, in the absence of evidence to the contrary, it is at least as likely as not that [Employee]'s work exposure to arsenic, beryllium, cadmium, cadmium oxide, chromic acid, chromium, chromium III, sodium chromate, sulfuric acid and vinyl chloride

space (Monomeric) was a significant factor in contributing to his death from lung cancer.

7. The evidence of record supports a causal connection between the employee's death due to lung cancer and his exposure to toxic substances at a DOE facility.
8. You have never filed a lawsuit and received a settlement or award based on the claimed exposures; at the time of your spouse's death, he had no had no minor children or children incapable of self-support who were not your natural or adopted children; and you or your spouse have not ever filed a state workers' compensation claim for your spouse's claimed condition.

Based on the above-noted findings of fact in this claim, the FAB hereby makes the following:

CONCLUSIONS OF LAW

The undersigned has reviewed the recommended decision issued by the district office on December 8, 2006. I find that you have not filed any objections to the recommended decision, and that the sixty-day period for filing such objections has expired. See 20 C.F.R. §§ 30.310(a) and 30.316(a).

Source documents used to compile SEM establish that the employee's occupational category as nuclear process operator, and/or work location in Area 200, at the Hanford site likely exposed him to toxic substances (arsenic, beryllium, cadmium, cadmium oxide, chromic acid, chromium, chromium III, sodium chromate, sulfuric acid and vinyl chloride space (Monomeric)), that are known to cause lung cancer.

On November 26, 2006, the DMC opined that, in the absence of evidence to the contrary, it is at least as likely as not that [Employee]'s exposure to arsenic, beryllium, cadmium, cadmium oxide, chromic acid, chromium, chromium III, sodium chromate, sulfuric acid and vinyl chloride space (Monomeric) was a significant factors in contributing to his death from lung cancer.

The evidence of record establishes that the employee was a DOE contractor employee as defined by § 7385s(1). The employee was diagnosed with a "covered illness," lung cancer, as defined by § 7385s(2). The employee contracted that "covered illness" through exposure to a toxic substance at a DOE facility. You are the employee's surviving spouse. Accordingly, you are entitled to compensation benefits in the amount of \$125,000.00 under Part E.

Seattle, WA,

Hearing Representative
Final Adjudication Branch

SAMPLE COVER LETTER, ALTERNATIVE FILING

Dear Claimant Name:

Enclosed please find the Notice of Final Decision which denies your claim for compensation and benefits under the Energy Employees' Occupational Illness Compensation Program Act (EEOICPA). If you disagree with this decision, you may request reconsideration. Such a request must be in writing and must be made within 30 days of the date of issuance of this decision. It must clearly state the grounds upon which reconsideration is being requested. In order to ensure that you receive an independent evaluation of the evidence, your request for reconsideration will be reviewed by a different Final Adjudication Branch hearing representative than that who issued the final decision. Your request for reconsideration should be sent to:

U.S. Department of Labor
DEEOIC
Final Adjudication Branch
P. O. Box XXX
CITY, STATE ZIP CODE

If your claim was denied because you have not established covered employment or a covered illness and you have new evidence of either covered employment or a covered illness, you may request a reopening of your claim. If your claim was denied because a cancer was not causally related to work-related exposure to radiation and you can identify either a change in the probability of causation guidelines, a change in the dose reconstruction methods or an addition of a class of employees to the Special Exposure Cohort, you may also request a reopening of your claim.

These requests to reopen your claim must be in writing and be sent, along with your supporting information, to the following address:

U.S. Department of Labor
DEEOIC, DISTRICT DIRECTOR
P.O. BOX XXX
CITY, STATE ZIP CODE

While you do not meet the statutory definition of an eligible survivor as set out under Part E of the EEOICPA, you may seek an alternative filing review pursuant to 42 U.S.C. § 7385s-4(d). You may request such a review by writing to:

U.S. Department of Labor
DEEOIC, DISTRICT DIRECTOR
ADDRESS

Alternative filing reviews assess a facility where alleged employment and exposure took place and render a determination as to potential causation. Should you wish to receive this type of review; the district office will provide you with a determination. Please note, however, that such a determination does not change your eligibility for benefits or establish causation under the Act, and is not subject to further agency or judicial review.

Please be advised that the final decision on your claim may be posted on the agency's website if it contains significant findings of fact or conclusions of law that might be of interest to the public. If it is posted, your final decision will not contain your file number, nor will it identify you or your family members by name.

Except as provided above, all future correspondence, inquiries or telephone calls should be directed to the district office. Thank you for your cooperation.

Sincerely,

Hearing Representative

Enc: Notice of Final Decision

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1. Purpose and Scope. This chapter describes the process by which the Director of the Division of Energy Employees Occupational Illness Compensation (DEEOIC) reopens claims for benefits under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) and vacates decisions of the Final Adjudication Branch (FAB).

2. Authority. Under 20 C.F.R. § 30.320, the Director of the DEEOIC has the authority to reopen a claim and vacate a FAB decision at any time after the FAB has issued a final decision pursuant to 20 C.F.R. § 30.316. Also, under 20 C.F.R. § 30.320(a), the Director may vacate a FAB remand order. The Director may reopen a claim and vacate a final decision or vacate a FAB remand order, regardless of whether a claimant requests such action.

The Director is granted sole discretion over the process by which a claim is reopened and/or a FAB decision is vacated. In the exercise of this discretion, the Director has delegated certain functions and authority to staff in the National Office and District Offices, such as the Branch Chief of the Policy Branch, the Unit Chiefs for the Unit of Policies, Regulations and Procedures (UPRP), and the District Directors (DDs), or Assistant District Directors (ADDs) at the discretion of the DD, of the four District Offices (DOs). The Director can grant authority to other individuals in the program as necessary to streamline the reopening process.

The Director is retaining sole signature authority for remand reviews or extremely complex or precedent setting reopenings. The DEEOIC Director's decision regarding reopening a claim or vacating a FAB decision is not reviewable.

3. Claimant's Explicit Request for Reopening. The regulations allow a claimant, at any time after the FAB has issued the final decision, to file a written request seeking reopening of his or her claim for benefits under the EEOICPA, pursuant to 20 C.F.R. § 30.320(b). The regulations allow that such a request may be filed:

3. Claimant's Explicit Request for Reopening. (Continued)

Provided that the claimant also submits new evidence of either covered employment or exposure to a toxic substance, or identifies either a change in the PoC guidelines, a change in the dose reconstruction methods or an addition of a class of employees to the Special Exposure Cohort.

There is no limit as to how many times a claimant may request a reopening. Each request will be evaluated for any evidence of a new or compelling nature which is material to the outcome of the claim and which might warrant a reopening.

a. Timeliness. A claimant may file a request for reopening at any time after the FAB has issued a final decision.

b. Initial Review. All correspondence in which a claimant explicitly requests that a claim be reopened, whether received in a district FAB office or DO, is forwarded to the DD with jurisdiction over the case file. Requests for reopening received in the National Office FAB are not forwarded to the National Office, but rather reviewed by the FAB-NO. The DD conducts an initial review of the correspondence to determine whether the request is accompanied by new evidence, or other information as required by regulation, which is of a sufficient and material nature and extent to warrant a reopening.

c. New Evidence. If the initial review reveals that new evidence has been submitted with the request for reopening, the DD determines whether the nature and extent of such evidence satisfies the requirements of 20 C.F.R. § 30.320, and whether it is sufficient to warrant reopening. The DD also considers whether, based on the totality of the evidence, the nature and extent of the new evidence might affect the outcome of the claim. If it does, then the DD reopens the case by issuing a Director's Order to vacate the pertinent final decision or portion of the final decision. The only circumstances in which a DD can reopen a case are as follows:

3. Claimant's Explicit Request for Reopening. (Continued)

(1) Employment. In instances where the denial was based on employment issues: employment records that establish previously denied or unverified time periods of covered Department of Energy, DOE contractor/subcontractor, atomic weapons employer, beryllium vendor employment, or Radiation Exposure Compensation Act (RECA) section 5 employment.

(2) Survivorship. In instances where the denial was based on survivorship issues: records or documents that demonstrate a relationship between a previously denied survivor and the covered employee. Or, cases under Part B where an employee claim has received a final decision to approve, but the claimant died before payment could be made.

(3) SEM. In instances where an update to the Site Exposure Matrices (SEM) or the submission of new factual evidence establish a previously denied, closed, or unverified toxic substance exposure, which is known to be linked to the claimed illness(es). Or, in cases where new evidence of exposure is received that demonstrates a clear link to the claimed illness(es). Evidence demonstrating a link between exposure and a claimed illness must meet the criteria outlined in procedures to be eligible for reopening under this bulletin.

(4) PoC. In instances where the decision to deny was based upon a dose reconstruction returned from NIOSH with a Probability of Causation (PoC) of less than 50%, and the claimant has submitted a diagnosis of a new cancer which results in a PoC of 50% or greater.

d. Change in Law, Regulations or Policies. If the initial review reveals that the claimant has identified a change in the law, regulations, or policies governing the EEOICP, the DD determines whether the nature and extent of such information

3. Claimant's Explicit Request for Reopening. (Continued)

satisfies the requirements of 20 C.F.R. § 30.320, and whether it is sufficient to warrant reopening.

The DD also considers whether, based on the totality of the evidence, the nature and extent of the new information might affect the outcome of the claim. If it does, then the DD reopens the case by issuing a Director's Order to vacate the pertinent final decision or portion of the final decision.

e. No New Evidence. If the initial review reveals that the claimant has submitted no new evidence and has not identified any change in the law, regulations or policies governing his or her claim, the DD still considers the merits of the reopening request and determines whether, based on the totality of the evidence, the nature and extent of the claimant's request might affect the outcome of the claim. If the review results in a determination that the case warrants a reopening, the DD proceeds with reopening the case by issuing a Director's Order to vacate the pertinent final decision or portion of the final decision.

f. Denial by District Director. If the DD determines that the evidence submitted, and/or the change in law, regulations, or policies identified by the claimant, is insufficient to support a reopening, the DD issues a Denial of Request for Reopening based on the claimant's failure to satisfy the evidentiary requirements set forth in 20 C.F.R. § 30.320(b). See paragraph 8 below for procedures for denying a specific request for reopening.

g. Referral to DEEOIC Director. If the DD cannot determine whether the evidence submitted, and/or the change in law, regulations, or policies identified by the claimant, is sufficient to warrant a reopening, or if the request presents complex issues or an issue that has not previously been addressed in DEEOIC policy guidance, the DD refers the case to National Office for review and consideration. The DD prepares

3. Claimant's Explicit Request for Reopening. (Continued)

a memorandum to the DEEOIC Director recommending that the case be reviewed for possible reopening.

In the memorandum, the DD outlines the case history and the evidence of record and explains why the new evidence, or other information, is material to the outcome of the claim. The case file is transferred to the National Office (NO) for possible reopening. See paragraph 7 below for procedures regarding cases sent to the DEEOIC Director for review.

4. Claimant's Nonspecific Correspondence or Evidence. Any nonspecific correspondence or evidence received prior to the deadline for a timely request for reconsideration of a final decision shall be reviewed as a request for reconsideration, pursuant to DEEOIC procedures.

If correspondence or evidence is received in a FAB office or DO after the deadline for a timely request for reconsideration of a final decision, and the final decision denied the claim to which the correspondence or evidence relates, the correspondence or evidence is reviewed for probative value to determine whether or not a reopening is warranted.

a. Received in FAB-NO. If such nonspecific correspondence or evidence is received in the National Office FAB (FAB-NO) after the deadline for a request for reconsideration, the case is assigned to a FAB-NO Hearing Representative (HR) for evaluation. The HR assigned to review the case is to be a HR who has had no prior association with the case file.

The HR evaluates the evidence to determine whether it meets the evidentiary requirements set forth in 20 C.F.R. § 30.320(b). The HR also examines the case file, correspondence and evidence with regard to procedural errors and/or changes in the law, regulations, or policy.

If the HR determines that a reopening may be warranted, he or she transfers the case file to the

4. Claimant's Nonspecific Correspondence or Evidence.

(Continued)

FAB-NO Branch Chief along with a draft memorandum to the DEEOIC Director regarding the reopening.

b. Received in DO or DO FAB. If such nonspecific correspondence or evidence is received in a DO or a DO FAB after the deadline for a request for reconsideration, the correspondence or evidence is transferred, along with the case file, to the DD with jurisdiction over the case file. The DD reviews the evidence to determine whether it meets the evidentiary requirements set forth in 20 C.F.R. § 30.320(b), and examines the case file, correspondence and evidence with regard to procedural errors and/or changes in the law, regulations, or policy. If it does, the DD reopens the case by issuing a Director's Order to vacate the pertinent final decision or portion of the final decision.

c. Case Referred to the DEEOIC Director. If the DD is unsure of whether the evidentiary requirements set forth in 20 C.F.R. § 30.320(b) are met, or if some other circumstance of a compelling nature is present where authority to handle has not been delegated to the field, the DD refers the case to National Office for review and consideration. The DD prepares a memorandum to the DEEOIC Director recommending that the Director, or his or her designated representative, review the case for possible reopening.

Since the claimant has not requested a specific action, he or she is not notified that the case has been sent to the DEEOIC Director for review and possible reopening. The DEEOIC Director, or his or her designated representative, reviews the materials and issues a decision based upon the merits, if and only if a reopening is warranted. The Director, or his or her designated representative, does not issue a decision if a reopening is not warranted, and returns the case file to the appropriate DO with a brief memorandum outlining his or her rationale. See paragraph 7 below for procedures regarding cases sent to the DEEOIC Director for review.

4. Claimant's Nonspecific Correspondence or Evidence.

(Continued)

d. Case Not Referred to the DEEOIC Director. Should the evidentiary requirements not be met, the FAB-NO HR or DD simply returns the nonspecific correspondence/evidence to the DO for filing in the case file. A National Office Policy Analyst drafts a brief memorandum to accompany the correspondence/evidence indicating that it was reviewed and found to be insufficient to warrant any further action. No decision denying a reopening will be issued in this situation, as the claimant did not request any specific action.

5. DD Communications About a FAB Decision. Under certain circumstances the DD may wish to communicate his or her concerns about a FAB decision (either a remand order or a final decision) to the Director of DEEOIC. In such instances, the case file is transferred to the Director of DEEOIC for review. The DD prepares a memorandum to the Director of DEEOIC outlining his or her concerns and requests the Director's review.

6. Review on Motion of Director. The Director of DEEOIC has the authority to determine if a claim should be reopened by vacating a FAB Final Decision or vacating a FAB Remand Order, even in the absence of a request. Such an action may occur for administrative reasons, due to procedural error, or due to a change in the law, regulations, agency policy, or it may occur for any other reason at the sole discretion of the Director. If the Director initiates such a review, the NO requests the case file from the District or FAB Office or delegates the authority to reopen through procedural bulletins.

7. Reopening a Claim and Vacating a FAB Decision. Only the Director of DEEOIC has the authority to reopen a claim by vacating a FAB Final Decision, except as specifically delegated in procedural guidance. The Director may use this authority at any time after any type of FAB decision is issued, including Final Decisions or Remand Orders. (See Exhibit 1).

7. Reopening a Claim and Vacating a FAB Decision.
(Continued)

Should the Director, or his or her designated representative, vacate a FAB decision, a Director's Order is issued with instructions for the future handling of the claim. The case file is then returned to the DO, if necessary, or the FAB office responsible for carrying out the specified instructions.

a. Return of Case File to DO. Should the Director, or his or her designated representative, determine that additional development by the DO and/or a new Recommended Decision (RD) are required, the Director's Order contains instructions and the case file is returned to the DO with jurisdiction. The new RD is subject to the adjudicatory process as outlined in the regulations, and the claimant is afforded the right to file an objection within 60 days of its issuance.

(1) DO Disagreement. Should the DO disagree with the Director's Order or any of the Director's findings, such disagreement must be channeled through the DD to the NO. The Director will entertain only disagreements deemed material to the potential outcome of a claim. The procedural aspect of the reopening process remains solely in the realm of the Director's authority as granted by the regulations.

b. Return of Case File to FAB. Should the Director, or his or her designated representative, determine that only a new FAB decision is required, the Director's Order is issued with instructions and the case file returned to the appropriate FAB office. The new FAB decision is subject to the adjudicatory process as outlined in the regulations and may be reopened or vacated by the process set out in this chapter.

(1) Instructions to the FAB. Under no circumstances will the FAB deviate from the instructions contained in a Director's Order.

7. Reopening a Claim and Vacating a FAB Decision.
(Continued)

The FAB must strictly comply with the Director's instructions.

(2) FAB Disagreement. Should the FAB disagree with the Director's Order or any of the Director's findings, such disagreement must be channeled through the FAB-NO Branch Chief to the NO. The Director will entertain only disagreements deemed material to the potential outcome of a claim. The procedural aspect of the reopening process remains solely in the realm of the Director's authority as granted by the regulations.

8. Reopening Multiple Claimant Claims. Given the procedure requiring each individual in a multi-claimant case record be party to a decision on entitlement benefits, situations may arise which require a prior final decision be reopened in order for a new recommended decision to be issued. This may be the result of new evidence presented after a final decision; or the development of new circumstances that necessitate reopening, such as the identification of a new potentially eligible survivor. In some situations, the new evidence may only directly affect one claimant; however, if there is any evidence justifying the reopening of one claim, all claims associated with the case file must be reopened, and a new recommended decision is issued to all parties to the claim.

9. Denying a Specific Request for a Reopening. The decision whether or not to reopen a claim is within the discretion of the Director. However, as described in paragraph 2 above, the Director has delegated authority to other individuals within the DEEOIC to deny some reopening requests.

a. Denial of the Reopening Request. If a reopening request is unsupported by new evidence, the request is denied by the Director or his or her representative to whom reopening authority has been delegated as described above.

9. Denying a Specific Request for a Reopening.

(Continued)

b. Issuing the Denial. The Denial of a Request for a Reopening is a formal denial of a reopening request accompanied by a cover letter to the claimant, and the claimant's authorized representative when required, that outlines the deficiencies in the reopening request warranting the denial. The Denial of a Request for a Reopening is accompanied by a Certificate of Service. Exhibit 2 shows a sample Denial of a Request for Reopening.

c. Post-Denial Actions. After a request for a reopening has been denied, whether by the Director of the DEEOIC or by his or her representative to which reopening authority has been delegated, the case file will be returned to the appropriate office, if not already there, for storage or further action as necessary.

10. Denying a Request to Vacate a FAB Remand Order. As noted above, only the Director of DEEOIC may vacate a FAB remand order. Requests to vacate FAB remand orders are usually generated from within DEEOIC. Should the Director agree with the remand order, he or she will deny the request to vacate by issuing a memorandum to the requesting party that outlines his or her findings. Only where the request is generated by the claimant is a formal denial issued by the Director.

11. ECMS Coding. All ECMS codes reflecting reopening requests, requests to vacate FAB decisions, and decisions granting or denying such requests must be properly entered pursuant to DEEOIC procedures.

Susan Spouse
123 Street
City, ST 12345

Dear Ms. Spouse:

I am writing in reference to your claim for survivor benefits under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA).

On July 20, 2007, the Final Adjudication Branch (FAB) issued a final decision denying your claim for benefits under Part E of the EEOICPA. The FAB found insufficient evidence to support a causal connection between your late husband's accepted pulmonary conditions and his death.

The EEOICPA allows for review by the Director of the Division of Energy Employees Occupational Illness Compensation (DEEOIC) of decisions issued by the FAB. It is within the Director's discretion to review and reopen such claims as necessary.

New medical evidence has been submitted in support of your claim that a link exists between Mr. Spouse's accepted pulmonary conditions and his death. Accordingly, the July 20, 2007 Part E final decision must be vacated. The attached Director's Order explains the reasons for reopening your Part E claim and instructs the Denver District Office to issue a new recommended decision.

Your file is being returned to:

U.S. Department of Labor, DEEOIC
Denver District Office
1999 Broadway, Suite 1120
PO Box 46550
Denver, CO 80201-6550

If you have any questions about the Director's Order, you may contact the Unit for Policies, Regulations and Procedures at 202-693-0081.

Sincerely,

[Name]
[Title]
DEEOIC

EMPLOYEE: Joe Spouse
CLAIMANT: Susan Spouse
FILE NUMBER: 123-45-6789
DOCKET NUMBER: 00000000-2007

DIRECTOR'S ORDER

The Energy Employees Occupational Illness Compensation Program Act (EEOICPA) regulations state that a final decision, or any other decision issued by the Final Adjudication Branch (FAB), may be reopened at any time on motion of the Director of the Division of Energy Employees Occupational Illness Compensation (DEEOIC). It further states that the case may be reopened without regard to whether new evidence or information is presented or obtained, and that the decision whether or not to reopen a case is solely within the discretion of the Director of the DEEOIC.

For the reasons set forth below, the July 20, 2007 Part E final decision is vacated. The case is returned to the Denver District Office to proceed as outlined below. The acceptance of your Part B claim is unaffected by this Director's Order.

BACKGROUND

The evidence of record shows that you filed for benefits under Parts B and E of the EEOICPA as the surviving spouse of the employee, Joe Spouse. You claimed that your late husband developed chronic silicosis, pulmonary fibrosis, and pneumoconiosis as a result of his employment as a uranium worker.

Joe Spouse's death certificate, signed by James Doctor, M.D., verifies his date of death as April 19, 2003. The immediate cause of death is listed as multi-organ failure due to hepatocellular cancer. Other significant conditions contributing to his death were listed as colon polyps, hypertension, coronary artery disease, and renal cysts.

A marriage certificate verifies that you were married to the employee on [Date]. The employee's death certificate lists you as his surviving spouse at the time of his death.

The district office verified that you were awarded benefits as Joe Spouse's surviving beneficiary under Section 5 of the Radiation Exposure Compensation Act (RECA). The accepted medical conditions were chronic silicosis, pulmonary fibrosis, and pneumoconiosis.

On October 20, 2006, the District Office issued a recommended decision finding you entitled to compensation under Part B of the EEOICPA in the amount of \$50,000, based on your receipt of the RECA award. On December 11, 2006, the FAB issued a final decision affirming the findings of the district office and accepted your claim for benefits under Part B.

With regard to your Part E claim, the district office requested that you submit evidence to establish a causal link between the employee's death due to hepatocellular cancer and the approved conditions of chronic silicosis, pulmonary fibrosis, and pneumoconiosis.

When no additional evidence was provided, the District Office issued a recommended denial of your Part E claim on May 7, 2007. The district office concluded that a connection had not been established between the employee's accepted RECA conditions and his death. On July 20, 2007, the FAB issued a final decision affirming the findings of the district office and denied Part E benefits.

By letter dated October 15, 2008, you submitted a request to reopen your Part E claim. New medical documents were provided detailing the employee's medical condition from May 2002 through his death. The district office forwarded your case file to the Office of the Director for review and consideration of reopening your Part E claim.

DISCUSSION

We have carefully reviewed your case file. Sufficient evidence has been submitted to warrant reopening of your Part E survivor claim.

The record now includes a progress note dated January 18, 2003, which indicates that the employee had a history of chronic obstructive pulmonary disease (COPD), for which he used an albuterol inhaler. The note states that the employee reported having chronic dyspnea for several months, which became worse over the previous month. An April 15, 2003 progress note indicates that the employee's oxygen saturation was maintained at 96% on two liters of oxygen. These records suggest that the employee was treated for a pulmonary condition in the months prior to his death.

For the reason that new medical evidence may establish a connection between the employee's accepted pulmonary conditions and his death, the July 20, 2007 final decision is no longer valid. Additional investigation is warranted to evaluate all factors that contributed to the employee's death.

CONCLUSION

The July 20, 2007 final decision denying your Part E claim is vacated. The case is returned to the Denver District Office for further development. The claim should be referred to a District Medical Consultant (DMC) to determine whether or not the medical evidence of record is sufficient to establish that the employee's accepted pulmonary conditions were a significant factor in aggravating, contributing to, or causing his death.

Upon completion of all necessary development, a new recommended decision will be issued. Should you disagree with the recommended decision, you will be afforded the opportunity to raise such objection and request either an oral hearing or review of the written record.

Washington, D.C.

[Name]
[Title]
DEEOIC

CERTIFICATE OF SERVICE

I hereby certify that on _____ a copy of the Director's Order
was sent by regular mail to the following:

Susan Spouse
123 Street
City, ST 12345

[Name]
[Title]
DEEOIC

Superseded

<Date>

Jane Claimant
PO Box 12345
City, State 67890

Dear Ms. Claimant:

I am writing in reference to your claim for benefits under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA).

On December 7, 2005, the Final Adjudication Branch (FAB) issued a final decision to deny your claim for breast cancer under Part B, because the probability of causation did not exceed the 50% threshold for compensability. On October 24, 2006, the FAB issued a final decision to deny your claim for breast cancer under Part E, because documentation did not establish that the condition was related to exposure to toxic substances.

The regulations provide that a claimant may file a written request that the Director of the Division of Energy Employees Occupational Illness Compensation (DEEOIC) reopen his/her claim. The decision whether or not to reopen a claim under this section is solely within the discretion of the Director.

On December 9, 2008, you requested reopening of your claim for benefits under Parts B and E of the EEOICPA. I have reviewed the objections and the evidence on file and find that your case is not in posture for reopening at this time. The attached Denial of Reopening Request provides further explanation of why there is insufficient basis to warrant reopening.

Your case file is being returned to:

U.S. Department of Labor, DEEOIC
Jacksonville District Office
400 West Bay Street, Room 722
Jacksonville, Florida 32202

If you have any questions about this Denial of Reopening Request, you may contact the Unit of Policies, Regulations and Procedures at 202-693-0081.

Sincerely,

Director,
Division of Energy Employees
Occupational Illness Compensation

Superseded

presenting a list of toxic substances along with human and non-human toxicity excerpts.

To determine the probability of whether you sustained cancer in the performance of duty, the district office referred your case to the Department of Health and Human Services (HHS) NIOSH for radiation dose reconstruction. NIOSH reported annual dose estimates from the date of initial radiation exposure during covered employment, to the date the cancer was first diagnosed. A summary and explanation of information and methods applied to produce these dose estimates, including your involvement through an interview and review of the dose report, are documented in the "NIOSH Report of Dose Reconstruction under EEOICPA." On July 26, 2005, you signed the OCAS-1, indicating the NIOSH Draft Report of Dose Reconstruction had been reviewed and agreeing that it identified all of the relevant information provided to NIOSH. The district office received the final NIOSH Report of Dose Reconstruction on August 2, 2005.

Methodology used by HHS in arriving at reasonable estimates of radiation doses received by an employee is binding on the DEEOIC. However, on May 20, 2009, a DEEOIC Health Physicist reviewed the dose reconstruction performed by NIOSH and the objections presented.

In the letter requesting reopening, you raised a number of points of contention with regard to your Part B claim.

These objections to the Part B decision denying your claim are challenges to the dose reconstruction methodology which is binding on the DEEOIC. Therefore, there is no basis for requiring a rework of the dose reconstruction and as such, the Health Physicist found no rationale to support reopening your claim.

In addition to the Health Physicist review, a DEEOIC Toxicologist reviewed the objections with regard to your Part E denial. In your request for reopening, you presented references pertaining to toxic chemical substances and their potential link to breast cancer. The DEEOIC toxicologist reviewed the most recent published literature of occupational medicine regarding toxic chemical exposure in the workplace and the potential development of adverse health effects. Review of the occupational desk references used by occupational health physicians and epidemiologists, which were peer reviewed by scientists, and the review of individual published studies that have investigated breast cancer, did not show a causal link between occupational exposures described in your letter and the development of breast cancer. As such, the toxicologist opined that it is

not "at least as likely as not" that exposure to toxic chemical substances at a covered DOE facility during a covered time period was a significant factor in aggravating, contributing to, or causing the employee's breast cancer.

In conclusion, I find there is no new technical evidence provided that requires a reopening of your Part B claim. As for Part E, the assessment on your claim was conducted appropriately and there is no link between toxic substance exposure and the claimed illness.

CONCLUSION

Based upon the foregoing discussion, I find there is insufficient basis to warrant a reopening of the December 7, 2005 Part B and the October 24, 2006 Part E Final Decisions of the FAB. However, if you should obtain new and probative evidence that establishes a link between toxic substance exposure and your claimed conditions of breast cancer, the DEEOIC will reconsider its position.

Washington, D.C.

Director
Division of Energy Employees
Occupational Illness Compensation

CERTIFICATE OF SERVICE

I hereby certify that on _____ a copy of the Director's Order
was sent by regular mail to the following:

Jane Claimant
PO Box 12345
City, State 67890

Director
Division of Energy Employees
Occupational Illness Compensation