



RELEASE - TRANSMISSION OF REVISED MATERIAL TO BE
INCORPORATED INTO THE FEDERAL (EEOICPA) PROCEDURE MANUAL:
CHAPTER 2-1900 REOPENING PROCESS.

EEOICPA TRANSMITTAL NO. 12-01

April 2012

EXPLANATION OF MATERIAL TRANSMITTED:

This material is issued as procedural guidance to update, revise and replace the text of EEOICPA Procedure Manual (PM) Chapter 2-1900, Reopening Process.

This version removes content from the previous version of this Chapter which was not relevant to the reopening process; including the following:

- Section 5, District Director Communications About a FAB Decision.

Also incorporates changes that have arisen since last publication of Chapter 2-1900, Reopening Process; to include:

- Provides additional guidance on referral for Reopening action
- Revised to clarify the handling of claimant's non-specific correspondence, and insufficient evidence for reopening.
- Expands description of a Director's Order and its components
- Gives additional information regarding the content of a Denial of Reopening Request.

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.

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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. While a reopening review can be initiated by written request by a party to a Final Decision, it may also occur at the discretion of the Director of the DEEOIC for administrative reasons, due to procedural error, or a change in the law, regulations, agency policy, or any other reason at the sole discretion of the Director. If the Director initiates such a review, the National Office (NO) requests the case file from the District or FAB Office for the reopening to be handled locally or delegates the authority to reopen at a District Office (DO) through procedural directive. The Director's decision to reopen a claim and vacate a FAB decision is not reviewable.

The Director will delegate reopening authority from time to time by issuance of policy directives or other formal guidance that explains the extent of reopening authority conferred. Certain delegated authority has been granted to the Branch Chief of the Policy Branch, the Unit Chiefs for the Policies, Regulations and Procedures Unit (PRPU), and the District Directors (DDs). For delegated reopening authority granted to the DDs, the delegation applies to Assistant District Directors (ADDs) when agreed to by a DD. The DEEOIC Director can grant reopening authority to other individuals in the program as needed. The Director retains sole reopening authority where no delegation has been issued.

3. Claimant's Explicit Request for Reopening. The regulations allow a claimant or a claimant's duly authorized representative, at any time after the FAB has issued a Final Decision, to file a written request seeking reopening of a Final Decision under the EEOICPA, pursuant

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

to 20 C.F.R. § 30.320(b). The Regulations allow that such a request may be filed:

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 Probability of Causation (PoC) guidelines, a change in the dose reconstruction methods or an addition of a class of employees to the Special Exposure Cohort (SEC).

There is no limit as to how many times a claimant may request a reopening. A written request for a reopening is to result in a written decision either accepting or denying the 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 a Final Decision be reopened, whether received in a district or FAB office, is forwarded to the DD responsible for the case file. Requests for reopening received in the National Office FAB (FAB-NO) are to be reviewed by the FAB-NO Branch Chief. The DD or FAB-NO Branch Chief is to conduct an initial review of the correspondence to determine whether the request is accompanied by new evidence, or other information, which is of a sufficiently compelling nature to warrant a reopening.
- c. Referral for Reopening Action. Once initial review of a reopening request is completed, the DD or FAB-NO Branch Chief is to determine the responsible party for issuing a reopening decision. In many instances, the DD will have authority to issue a reopening decision on his or her own authority, as delegated by the Director. The FAB-NO Branch Chief, however, does not have the capacity to reopen a Final Decision. Accordingly, he or she must decide the appropriate office to which the reopening request must be referred for review. The options available to the

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

FAB-NO Branch Chief are to either refer the matter to a DD with jurisdiction over the case or to the DEEOIC Director. Circumstances in which a DD can reopen a claim are as follows:

(1) Employment. In instances where a denial is based on employment issues: employment records that establish previously denied or unverified time periods of covered Department of Energy (DOE), DOE contractor/subcontractor, Atomic Weapons Employer (AWE), beryllium vendor, or Radiation Exposure Compensation Act (RECA) section 5 employment.

(2) Survivorship. In instances where the denial is 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. Additionally, instances in which a new survivor is identified; as discussed later in this chapter.

(3) Site Exposure Matrices (SEM). In instances where an update to the 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 link to the claimed illness(es).] This guidance applies to any case requiring reopening as a result of SEM Quality Assurance Plan actions or other programmatic re-assessment of denied Part E claims based on SEM exposure or illness link updates.

(4) PoC. In instances where a Final Decision has been issued to deny a claim for any cancer based upon a dose reconstruction returned from the National Institute for Occupational Safety

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

and Health (NIOSH) with a PoC of less than 50%, and the claimant has submitted a diagnosis of a new cancer, the case file is returned to NIOSH for completion of a new dose reconstruction. In cases in which the revised dose reconstruction results in a PoC of 50% or greater, the case is then reopened and a new Recommended Decision is issued accepting the claim. However, if the latest dose reconstruction results in a PoC of less than 50%, no reopening action is necessary, and the new claim for cancer is denied.

(5) New Medical Evidence - In instances where a previous Final Decision has been issued to deny a claim based on the lack of evidence to establish a diagnosis, and medical evidence is submitted which clearly establishes a diagnosis, the Director may reopen the claim as an exercise of discretion when the new evidence is determined to be material to the outcome of a claim.

(6) 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 EEOICPA, the DD determines whether the nature and extent of such information satisfies the requirements of 20 C.F.R. § 30.320, and whether it is sufficient to warrant reopening.

d. Denial of Request for Reopening. If 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.

e. Referral to DEEOIC Director. If the DD or FAB-NO Branch Chief 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 an issue for which the Director has not delegated reopening authority, the case is to be referred to the

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

DEEOIC Director. Reopening requests involving uniquely complex or potentially sensitive topics are to also be referred to the Director. A memorandum to the Director recommending that the case be reviewed for possible reopening is to accompany the case record. The memorandum is to outline the case history, the evidence of record and explain why the new evidence, or other information, is material to a potential reopening.

4. Claimant's Non-Specific Correspondence or Evidence. Once a Final Decision is issued, there may arise situations where non-specific correspondence or evidence is received. Under these circumstances, it is difficult to interpret the documentation to determine if the claimant is pursuing a challenge to a Final Decision. To address this problem, it will be necessary to first attempt to contact the claimant by telephone. This action is to be undertaken by the district or FAB office with possession of the case record at the time that the non-specific correspondence or evidence is received. As such, it is vital that the evidence be directed to the appropriate designation upon receipt.

The claimant should be notified of the options available to him or her given the evidence submitted. These options include reconsideration within 30 days of the Final Decision (if applicable) or evaluation under the authority granted to the Director to reopen a claim. If the claimant provides clarification of his or her intention, a note is to be entered in ECS clearly documenting the information provided. Should the Claims Examiner (CE) or FAB representative not reach the claimant by phone within a reasonable period of time (approximately 3 days), and clarification cannot be obtained by telephone, it will be necessary to evaluate the evidence to determine the appropriate action to be undertaken.

a. Non-Specific Correspondence or Evidence Received Within 30 Days of a Final Decision. If attempts to clarify the intent of the claimant are not successful, and the 30-day period granted to request reconsideration has not expired, a DO FAB Manager or

4. Claimant's Non-Specific Correspondence or Evidence.
(Continued)

the FAB-NO Branch Chief will need to determine if a sufficient basis exists to treat the documentation as a request for reconsideration. If it is determined that the evidence warrants reconsideration, FAB is to proceed with a decision. Otherwise, as explained later, the documentation may be added to the case record with no action taken other than to denote in the case record that the material was received and reviewed.

b. Non-Specific Correspondence or Evidence Received After 30 Days of a Final Decision. Once the option of reconsideration is extinguished, the claimant has only the ability to pursue reopening should they disagree with a Final Decision. Without clarification from the claimant, any non-specific correspondence or evidence will need to be evaluated to determine if sufficient reason exists to require a reopening decision.

(1) Received in DO or DO FAB. If non-specific correspondence or evidence is received in a district or FAB office, 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 there is sufficient basis to warrant a reopening, and whether he or she has been delegated authority to reopen based on the case circumstance. If the DD possesses the authority to reopen a Final Decision, the DD issues a Director's Order vacating the Final Decision. If the DD does not have the requisite authority to reopen the Final Decision, or there is some other complication, the matter is referred to the DEEOIC Director.

(2) Received in FAB-NO. If such non-specific correspondence or evidence is received in the FAB-NO, the case is submitted to the FAB-NO Branch Chief for evaluation. Depending on the delegations that exist for issuing a reopening decision, as explained earlier in this chapter,

4. Claimant's Non-Specific Correspondence or Evidence.
(Continued)

he or she will then determine whether the matter is to be referred to a DD or the DEEOIC Director.

(3) Case Referred to the DEEOIC Director. If the DD or FAB-NO Branch Chief is unsure if the evidentiary requirements for a reopening or if some other extenuating circumstance exists to preclude a decision on the sufficiency of the reopening, the matter is to be referred to the DEEOIC Director. 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. The DEEOIC Director, or his or her designated representative, reviews the materials and issues a decision based upon the merits of the evidence. Where review of the case results in a decision that a reopening is not appropriate, a memo is to be prepared for the file responding to the request for review. The case file is then returned to the appropriate office with jurisdiction over the claim.

c. Insufficient Evidence to Pursue Reconsideration or Reopening. In any situation where non-specific evidence or correspondence has been reviewed, clarification has been sought, but not received from a claimant, and there is determined to be insufficient reason to warrant action, the DD or the FAB-NO Branch Chief is to file all the documentation in the case record. A memo is to be placed in the case record which indicates that the non-specific evidence has been reviewed and found insufficient to warrant further action. No decision is required at that time, as no specific action has been requested or deemed warranted.

5. Reopening and Vacating a FAB Decision. The decision to reopen a case or vacate a FAB remand is explained in a Director's Order. A Director's Order is prepared under the signature of the DEEOIC Director or an individual with delegated reopening authority.

5. Reopening and Vacating a FAB Decision. (Continued)

a. Director's Order Content. A Director's Order contains three components.

(1) Cover Letter. The cover letter is addressed to the claimant(s) receiving the Director's Order. It cites the authority by which a Final Decision or Remand Order is being vacated, and provides a summary of the issue under review, a clear indication of all actions taken under the Order and the reopening conclusion.

(2) Director's Order. A Director's Order is the written notice which explains the basis for reopening and vacating a FAB decision. It is generally divided into three parts; including: a Background section, which discusses the history of the case record leading to the Final Decision under contention; a Discussion section which includes analysis of the evidence supporting the decided outcome; and a Conclusion (See Exhibit 1). The decision narrative is to provide descriptive explanation of the rationale supporting the reopening and the basis for vacating a FAB Final Decision or remand. This may entail the identification of misapplied program policy or incorrect interpretation of evidence. A Director's Order may provide corrective action instruction to a district or FAB office responsible for the case record.

(3) Certificate of Service. This confirms the mailing date of a Director's Order, and lists the name and address of the intended decision recipient. A Certificate of Service is completed individually for each claimant (or his or her authorized representative) who is party to the Director's Order. It must be date stamped on the date of decision mailing.

b. Reopening Multiple Claimant Claims. Given the procedure requiring each individual in a multi-claimant case record be party to any decision determining benefit entitlement, situations may arise

5. Reopening and Vacating a FAB Decision. (Continued)

which require a Final Decision be reopened for a new Recommended Decision and/or Final 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 eligible survivor. In some situations, the new evidence may only affect one claimant; however, if there is any evidence justifying the reopening of one claim, all claims associated with the case file are to be reopened, and all parties to the claim are to be included in a new decision.

c. District or FAB Offices are Responsible for Complying With Any Guidance or Instruction Provided in a Director's Order.

d. Disagreement to DEEOIC Director. In certain situations, a DD or the FAB-NO Branch Chief may disagree with a Director's Order issued by the DEEOIC Director. Such disagreements must be brought to the attention of the Director immediately. However, the Director will entertain only disagreements deemed material to the potential outcome of a claim. The DD or FAB-NO Branch Chief must comply with the determination of the Director once any disagreement with a Director's Order is addressed.

6. Denying a Specific Request for a Reopening. A Denial of Reopening Request is a written decision issued by either the DEEOIC Director or a designated representative. The content of a denial is similar to that of a Director's Order in that it contains a cover letter, decision notice, and Certificate of Service. Much like a Director's Order the decision notice provides a background of the case history leading up to the decision under contention, and a discussion of the evidence or argument presented in support of a reopening. However, the decision must provide a detailed explanation as to why the evidence presented is insufficient to warrant reopening of a Final Decision or Remand Order (Exhibit 2). Each objection presented by a claimant is to be addressed in a denial of reopening.

6. Denying a Specific Request for a Reopening. (Continued)

a. Issuance of a Denial of Reopening Request is to be Limited to the Individual(s) Requesting Review of a Final Decision.

b. Denying a Request to Vacate a FAB Remand Order. Only the DEEOIC Director may vacate a FAB Remand Order. In most instances, a reopening review of a Remand Order will originate from within DEEOIC due to the identification of misapplied program policy or challenge to FAB's rationale for returning a case to the DO. Upon review of the matter, 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. Otherwise, a Director's Order is to be issued to the claimant(s) which vacates the remand under review and returns the matter to the appropriate office for handling.

7. ECS Implications. All reopening requests, requests to vacate FAB decisions, and decisions granting or denying such requests must be properly documented in the Energy Compensation System (ECS) pursuant to DEEOIC procedures.

<Date>

Joe C. Claimant
123 Main Street
City, State, Zip

Dear Mr. Claimant:

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

On March 6, 2005, the Final Adjudication Branch (FAB) issued a final decision denying your claim for colon cancer under Part B of the EEOICPA, citing the lack of medical evidence to establish that you have been diagnosed with colon cancer. A subsequent final decision was issued by the FAB on June 10, 2006, which denied your claim for this condition under Part E, again based on insufficient evidence to establish that you have been diagnosed with this illness.

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 solely within the Director's discretion to review and reopen such claims as necessary. The Director has delegated the authority to review and issue determinations for certain claims to the District Director having jurisdictional authority over the case.

A recent review of your case reveals that medical evidence received by the Cleveland District Office on April 26, 2007 confirms your diagnosis of colon cancer and is sufficient to warrant reopening your claims under both Part B and Part E. Accordingly, the attached Director's Order vacates the March 6, 2005 and June 10, 2006 final decisions denying your claims for benefits for the condition of colon cancer under Part B and Part E, respectively. The attached Order explains in more detail the reasons for this decision. The district office is directed to evaluate the new medical evidence in support of your claims, and issue a new recommended decision to address your eligibility under both Part B and Part E of the Act.

Your case file is being returned to:

U.S. Department of Labor, DEEOIC
Cleveland District Office
1001 Lakeside Avenue, Suite 350
Cleveland, OH 44114

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 C. Claimant
CLAIMANT: Joe C. Claimant
FILE NUMBER: XXX-XX-1234
DOCKET NUMBER(S): 00000-2003
00000000-2006

DIRECTOR'S ORDER

The Energy Employees Occupational Illness Compensation Program Act (EEOICPA or the Act) Regulations at 20 C.F.R. § 30.320 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 March 6, 2005 and June 10, 2006 final decisions denying your claims for benefits for the condition of colon cancer under Part B and Part E, respectively, are vacated. The case is returned to the Cleveland District Office to proceed as outlined below.

BACKGROUND

The evidence of record shows that on March 7, 2004, you filed claims for benefits under both Part B and Part E the EEOICPA. You claimed that you had developed colon cancer as a result of your employment at a Department of Energy (DOE) facility.

Form EE-3, Employment History, states that you were employed as a production worker at the Iowa Army Ammunition Plant (IAAP) in Burlington, Iowa, from May 3, 1965 to May 25, 1971. The DOE was able to verify the claimed dates of employment at the IAAP.

With regard to the claimed condition of colon cancer, no medical evidence was submitted to establish that you had been diagnosed with this illness. As such, the district office issued four letters, dating from July of 2004 to December of 2004, requesting that you provide evidence to establish that you had been diagnosed

with colon cancer, and that this condition was a result of occupational exposure. However, no evidence was received.

Accordingly, on January 28, 2005, the district office issued a recommended decision to deny your claim for colon cancer under Part B of the EEOICPA; finding insufficient evidence to establish that you were diagnosed with colon cancer. The findings of the district office were later affirmed by the FAB in a final decision of March 6, 2005. Subsequently, on May 1, 2006, a recommended decision was also issued by the district office to deny your claim for colon cancer under Part E; again citing insufficient evidence that you had been diagnosed with the claimed illness. After independent assessment and review, the FAB affirmed the findings of the district office by final decision of June 10, 2006.

In a submission received by the district office on April 26, 2007, you provided a pathology report and additional medical records which confirm your diagnosis with colon cancer. Accordingly, your case file was forwarded to the Office of the Director for review and consideration of reopening claims under both Part B and Part E of the Act.

DISCUSSION

After careful assessment of your case record, I find it necessary to vacate the March 6, 2005 and June 10, 2006 final decisions denying your claims for benefits for the condition of colon cancer under Part B and Part E, respectively. Sufficient evidence exists to establish that you have been diagnosed with the claimed condition of colon cancer. As such, additional development is required to determine your eligibility to benefits under both Part B and Part E of the EEOICPA.

On April 26, 2007, you submitted new medical evidence in support of your claims for colon cancer. This new evidence includes a pathology report dated January 16, 2002, confirming that you were diagnosed with colon cancer. Additionally, various medical reports and progress notes establish your diagnosis and treatment for this illness ranging from 2002 to present. This new evidence negates the basis of the March 6, 2005 and June 10, 2006 final decision denying your Part B and Part E claims. As such, it is necessary to vacate these prior final decisions so that the new medical evidence may be evaluated by the district office and a new recommended decision issued.

CONCLUSION

The March 6, 2005 and June 10, 2010 final decisions, respectively denying your claim for colon cancer under Part B and Part E are vacated. The district office is directed to evaluate the new medical evidence in support of your claims and issue a new recommended decision to encompass your eligibility to benefits for the condition of colon cancer under both Part B and Part E of the Act.

Should you disagree with the decision, you will be afforded the opportunity to file an objection and request an oral hearing or a review of the written record.

Washington, D.C.

[Name]
[Title]
DEEOIC

CERTIFICATE OF SERVICE

I hereby certify that on
regular mail to the following:

a copy of the Director's Order was sent by

Joe C. Claimant
123 Main Street
City, State, Zip

[Name]
[Title]
DEEOIC

<Date>

Jane B. Claimant
PO Box 12345
City, State Zip

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 failed to exceed the 50% threshold for compensability. A subsequent final decision of October 24, 2006 denied your claim for breast cancer under Part E, finding insufficient evidence to establish that this 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

EMPLOYEE: Jane B. Claimant
CLAIMANT: Jane B. Claimant
FILE NUMBER: XXX-XX-1234
DOCKET NUMBER(S): XXXXX-2005
XXXXXXXX-2006

DENIAL OF REOPENING REQUEST

The Energy Employees Occupational Illness Compensation Program Act (EEOICPA) 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 Regulations state that in order to support the request to reopen, a claimant must submit evidence of either covered employment or exposure to a toxic substance, or 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 (SEC). The decision whether or not to reopen a claim under this section is solely within the discretion of the Director.

For the reasons set forth below, the December 9, 2008 reopening request is denied. Accordingly, the December 7, 2005 Part B and the October 24, 2006 Part E final decisions of the Final Adjudication Branch (FAB) remain in effect. The case is returned to the Jacksonville District Office.

BACKGROUND

The evidence of record shows that on January 5, 2005, you filed a claim for benefits under the EEOICPA. You claimed that you had developed breast cancer as a result of your employment at a covered Department of Energy (DOE) facility.

Form EE-3, Employment History, indicates that you were employed at the Pinellas Plant, located in Largo, FL, from 1975 until 1997. The DOE was able to establish your employment with General Electric, a known DOE contractor at the Pinellas Plant, from March, 3 1975 to June 10, 1997. With regard to the claimed condition, a pathology report of December 3, 2001 established you have been diagnosed with breast cancer.

In development of your claims for benefits, your case was referred to the National Institute for Occupational Safety and Health (NIOSH) to prepare a radiation dose reconstruction. The DEEOIC used the information supplied in the dose reconstruction report to determine whether your breast cancer is "at least as likely as not" related to radiation exposure during your employment at the Pinellas Plant. For a claim to be compensable under Part B, the probability of causation (PoC) must be 50% or greater. In this case, the dose reconstruction estimates resulted in an 18.26% probability.

Accordingly, on August 22, 2005, the district office recommended denial of your claim for benefits under Part B, finding that your breast cancer was not "at least as likely as not" caused by occupational exposure to radiation. The findings of the district office were subsequently affirmed by the FAB in a final decision of December 7, 2005.

With regard to your claim under Part E, the district office conducted a search of the Site Exposure Matrices (SEM). The SEM acts as a repository of information related to toxic substances potentially present at covered DOE sites and has information regarding site investigations and Haz-Map (Occupational Exposure to Hazardous Agents) to assist in evaluating causation. Based on the results of the SEM search and a review of all other evidence presented in the case, the district office was unable to find a link between toxic exposure and breast cancer.

In addition to the SEM search, the district office requested that you provide additional information in support of your claim under Part E. Specifically, by letter dated June 30, 2006, the district office requested evidence to support a link between your claimed condition and exposure to a toxic substance. No additional documentation was received.

As such, on August 15, 2006, the district office issued a recommended decision to deny your claim for breast cancer under Part E; finding insufficient evidence to establish that the claimed condition was "at least as likely as not" caused, contributed to, or aggravated as a result of exposure to toxic substances during your employment. By final decision dated October 24, 2006, the FAB affirmed the findings of the district office, denying your claim for benefits under Part E of the EEOICPA.

By fax received on December 9, 2008, you requested reopening of your claims under Both Part B and Part E of the Act. Due to the nature of the request, your case file was transferred to the Office of the Director for review and consideration of reopening.

DISCUSSION

After a careful assessment of your case record, I have concluded there is insufficient evidence to warrant reopening your claim. The request for reopening cited several technical objections challenging NIOSH's dose reconstruction methodology. Furthermore, it challenged the Part E decision by 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 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.

However, in your 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. Methodology used by NIOSH in arriving at reasonable estimates of radiation doses received by an employee is binding on the DEEOIC. However, the application of this methodology was reviewed by a DEEOIC Health Physicist on May 20, 2009, and found to be based on current science and in keeping with NIOSH policies and procedures. Therefore, there is no basis for 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 the denial of your claim under Part E. In your request for reopening, you presented references pertaining to chemical substances linked to breast cancer, but did not provide any treatment records or other medical evidence that showed you developed breast cancer as a result of a exposure to an occupational toxin. 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. Given the opinion of the DEEOIC Toxicologist and the lack of any medical evidence showing a link between breast cancer and an occupational toxic substance exposure, there is no reason to reopen the Part E portion of your claim.

In summary, I find that the application of the NIOSH dose reconstruction methodology was appropriate, and there is no basis to warrant reopening your claim under Part B of the Act. Additionally, I find no new evidence to establish a link between toxic substance exposure and the claimed illness which necessitates reopening your claim under Part E.

CONCLUSION

Based upon the foregoing discussion, I find there is insufficient basis to warrant reopening the December 7, 2005 Part B and the October 24, 2006 Part E final decisions of the FAB. As such, your December 9, 2008 request for reopening is denied. 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 Denial of Reopening Request was sent by regular mail to the following:

Jane B. Claimant
PO Box 12345
City, State 67890

Director
Division of Energy Employees
Occupational Illness Compensation