



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

EEOICPA TRANSMITTAL NO. 16-02

February 2016

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 incorporates changes that have arisen since the last publication of Chapter 2-1900, Reopening Process:

- Removes pagination from the Chapter and the Page Number column from the Table of Contents.
- Removes the footer on all pages subsequent to the Table of Contents.
- The Chapter contains updated language throughout including the use of CMC (Contract Medical Consultant) from the use of DMC; the use of ECS (Energy Compensation System) from the use of ECMS; and the use of OWCP Imaging System (OIS).
- Provides updated guidance for Section 3 "Claimant's Explicit Request for Reopening."
- Provides updated guidance for Section 4 "Claimants' Non-Specific Correspondence or Evidence."
- Removes Item d from Section 5 "Reopening and Vacating a FAB Decision" from the last publication of 2-1900.
- Section 6 from the last publication of 2-1900 has been retitled "Reopening and Vacating a FAB Decision Following an Employee's or Survivor's Death" and new guidance has been provided for this section.

- Section 6 from the last publication of 2-1900 is now Section 7 "Denying a Specific Request for Reopening" and new guidance has been provided for this section.
- Section 7 from the last publication of 2-1900 is now Section 8 "ECS Implications."

The following Exhibits from the last publication have been updated:

- Exhibit 1, Sample Director's Order to Reopen
- Exhibit 2, Sample Denial of a Request for Reopening

Rachel P. Leiton

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

Filing Instructions:

Remove

PM Ch. 2-1900

Insert

PM Ch. 2-1900

File this transmittal behind Part 2 in the front of the 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 any party to a Final Decision may submit a written request for reopening, 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 for the reopening to be handled 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 by issuance of policy directives or other formal guidance that explains the extent of reopening authority conferred. In certain circumstances, the Director may delegate authority to reopening claims to the Branch Chief of the Policy Branch, the Unit Chiefs for the Policy, 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 in any instance where he or she has not delegated reopening authority.

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

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 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 issues a Final Decision. The Central Mail Room (CMR) is to associate incoming reopening documentation to the case record in the OWCP Imaging System (OIS). Upon review by the responsible staff person in the district office or FAB, the reopening is marked as reviewed and indexed clearly as a request for reopening.

b. Initial Review. The responsible staff person who screens the incoming reopening request in OIS is to direct the documentation to the DD responsible for the case file. Requests for reopening received in the National Office FAB (FAB-NO) are 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 is to decide the appropriate office to which the reopening request is referred for review. The options available to the FAB-NO Branch Chief are to refer the matter to a DD with jurisdiction over the case or refer it to the DEEOIC Director. Circumstances in which a DD can reopen a Final Decision are as follows:

- (1) Employment. Newly submitted employment evidence contradicts a Final Decision that the employee did not have covered employment.
- (2) Survivorship. A previously denied survivor submits new evidence to document his or her qualifying relationship to the employee. A DD may also reopen a Final Decision when a new survivor subsequently files a claim in a multiple claimant case and is determined to be eligible.
- (3) Site Exposure Matrices (SEM). An update occurs to SEM or the claimant presents new factual evidence that a previously denied, closed, or unverified toxic substance exposure is newly shown to be linked to the claimed illness(es).
- (4) PoC. Cases containing a Final Decision based on a PoC of 50% or less are reopened by the DD when new evidence is received that warrants a referral to the National Institute for Occupational Safety and Health (NIOSH) resulting in a revised PoC that makes the claim compensable. This most commonly occurs with claimant submission of an additional cancer claim. In those instances where a new cancer is evaluated by NIOSH and does not result in a PoC of 50% or greater, a reopening of the prior Final Decision is not necessary. The DD directs his or her staff to proceed with any additional development that may be warranted (Part E analysis for non-radiogenic toxic substances) or proceed with a recommendation to deny the new cancer claim if Part E does not apply.

(5) New Medical Evidence. New medical records or documentation is submitted, which clearly establishes a diagnosis of a medical condition or the existence of a percentage of permanent partial impairment, previously denied in a Final Decision due to insufficient medical evidence.

(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 no evidence is submitted, or 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, he or she is to refer the matter to the DEEOIC Director. A DD or the FAB-NO Branch Chief is to refer to the Director requests involving uniquely complex or potentially sensitive topics. In these instances, the person making the referral to the Director prepares a memorandum explaining his or her reasons for requesting the Director review the case for reopening. 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. It is important that the DD or FAB-NO Branch Chief merely identify the issue(s) requiring review. He or she is not to advocate for a particular reopening outcome, as that is the exclusive purview of the DEEOIC Director.

4. Claimant's Non-Specific Correspondence or Evidence.

Once FAB issues a Final Decision, there may arise situations where a claimant submits non-specific correspondence or evidence. Under these circumstances, it is difficult to interpret the documentation to determine if the claimant is objecting to a particular Conclusion of Law referenced in the Final Decision. To address this problem, it is necessary for the staff person responsible for the claim to contact the claimant by telephone to ascertain his or her intent to pursue an objection.

During contact with the claimant, the responsible Claims Examiner (CE) or FAB representative is to notify the claimant of his or her options, which may 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 written or verbal clarification of his or her intention, the CE or FAB representative is to input a note in the Energy Compensation System (ECS) documenting clearly the information provided. Should the CE or FAB representative not reach the claimant by phone within a reasonable period (approximately 3 days), and clarification cannot be obtained by telephone, he or she will need 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 FAB-NO Branch Chief is to determine if a sufficient basis exists to treat the documentation as a request for reconsideration. A DO FAB Manager or FAB-NO Branch Chief can delegate this responsibility to other FAB staff persons. If it is determined that the evidence warrants a reconsideration determination, a DO FAB Manager or FAB-NO Branch Chief ensures that the matter is referred to the proper FAB staff person to record the request as a reconsideration requiring action.

b. Non-Specific Correspondence or Evidence Received After 30 Days of a Final Decision. Once the

claimant's option of requesting reconsideration expires, the claimant only has the ability to pursue reopening should he or she disagree with a Final Decision. With the receipt of non-specific correspondence after the period of reconsideration submission expires and efforts to have the claimant clarify his or her intent to request reopening are unsuccessful, the staff person in possession of the file is to coordinate with the DD with jurisdiction over the case file to determine the appropriate course of action. The DD (or his or her delegate) 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 or their delegate decides that the evidence supports taking reopening actions and possesses the authority to reopen the Final Decision, he or she proceeds to review the case for a reopening decision. If the DD does not have the requisite authority to reopen the Final Decision, or there is some other complication, he or she seeks guidance from the DEEOIC Director.

c. Non-specific Evidence That Does Not Warrant Reconsideration or Reopening. Under any circumstance where incoming correspondence does not support reconsideration or reopening, the assigned CE or FAB representative assigned to the case is responsible for uploading a memorandum to file in OIS documenting the actions taken to review the correspondence that supports taking no action.

5. Reopening and Vacating a FAB Decision. The DEEOIC Director or an individual acting under a delegated authority, reopens a Final Decision by issuing a Director's Order.

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 provides narrative explaining the basis for reopening and vacating a FAB decision. It is 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. There are many reasons for reopening a Final Decision, including the receipt of new evidence, incorrect application of program policy, or content errors. In addition to including a written explanation of the reason(s) for reopening a Final Decision or Remand, 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 dated on the date of decision mailing.

b. Reopening Multiple Claimant Claims. Under certain situations, the CE or FAB representative is to proceed with a reopening referral when a circumstance involves a change to a benefit entitlement after the issuance of a Final Decision involving multiple claimants. Each individual named in a multiple claimant Final Decision is required to be a party to any decision that addresses a benefit entitlement, even if the outcome does not necessarily change each claim. The reason for this is to ensure each filed claimant receives notification of the distribution of

benefits under the claim to which he or she is a claimant. It also permits each claimant to contest any outcome to which he or she disagrees. Common reasons for reopening a prior Final Decision to multiple claimants includes the identification of a new qualifying survivor, new evidence documenting that a previously ineligible survivor now qualifies, or reallocation of lump sum compensation that was held in abeyance until the status of a non-filing survivor was determined.

c. District or FAB Offices are Responsible for Complying With Any Guidance or Instruction Provided in a Director's Order. The issuance of a Director's Order is at the discretion of the Director or a delegate. As the decision represents the intent of the Director to address a defect in a Final Decision, district or FAB offices are required to comply with any guidance or instruction included in a Director's Order.

6. Reopening and Vacating a FAB Decision Following an Employee's or Survivor's Death. In cases where an employee or survivor dies following the issuance of a Final Decision and a new survivor files a subsequent claim, the CE takes action to administratively close the deceased individual's claim. He or she then initiates action to adjudicate the claims for any additional new survivor(s). In some instances, during the adjudication of the claim for a new survivor, the CE may determine that a factual finding and/or Conclusion of Law in a previously issued Final Decision (i.e., covered employment, survivorship, medical diagnosis, etc.) is not accurate and affects the adjudication of the new survivor's claim. Once FAB incorporates a factual finding and/or Conclusion of Law into a Final Decision, a CE cannot undo the decision by administratively closing it. A factual finding and/or Conclusion of Law cited in a Final Decision is legally operable until vacated by a Director's Order issued by the Director or someone with delegated authority to do so. For example, the employee received a Final Decision that specified covered dates of employment at facility A; however, with the employee's death, a survivor decision is now needed. Upon review, the CE finds that the employee's employment actually occurred at facility B. Under this

circumstance, the CE must obtain a reopening of the decision that was issued to the employee to allow for a correct reference to covered employment at facility B. The CE is only required to address factual findings and/or Conclusions of Law that contradict directly with the evidence necessary to proceed with a new decision. It is not necessary for the CE to obtain a Director's Order when FAB concluded that it did not have the necessary evidence needed to arrive at a decision regarding a particular factual finding and/or Conclusion of Law.

In cases where the CE identifies a material factual finding and/or Conclusion of Law in a prior Final Decision that is now contradicted based on a new examination of case evidence, he or she is to obtain a Director's Order vacating the Final Decision containing the erroneous factual finding and/or Conclusion of Law.

a. When issuing a Director's Order to correct a factual finding and/or Conclusion of Law from a previously issued Final Decision, the Director or DD with authority to reopen the claim issues the decision to all the parties named in the vacated Final Decision. In the circumstance where all the parties who received the decision are deceased, the Director or the DD is to issue the Director's Order as would normally be the case, but annotate that he or she is issuing it to the case file as an administrative function.

7. Denying a Specific Request for 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 is to provide a detailed explanation as to why the evidence presented is insufficient to warrant reopening of a Final Decision or Remand Order (Exhibit 2). The Director or designated representative responds comprehensively to each objection presented by a claimant.

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

b. Requests to Vacate a FAB Remand Order. The DEEOIC Director is the only authority that is permitted to vacate a FAB Remand Order. A reopening review of a Remand Order will normally originate from a DD or ADD due to the identification of misapplied program policy or a challenge to FAB's rationale for returning a case to the DO. In these scenarios, the DD or ADD is to send his or her request for a review of the Remand to the Director. The referral is to include a memorandum identifying the specific Remand Order under contention and state merely that the DD or ADD wants the Director to review the Remand for accuracy. The DD or ADD is not to advocate for any particular outcome, merely that there is a potential deficiency contained in the Remand that the Director needs to review. Upon receipt, if the Director agrees with the Remand Order, he or she will deny the request to vacate by issuing a memorandum to the requesting party. Otherwise, the Director issues a Director's Order to vacate the Remand and return the case file to the proper office for handling.

8. ECS Implications. All reopening requests, requests to vacate FAB decisions, and decisions granting or denying such requests are to be properly documented in 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 a physician diagnosed you with colon cancer. The FAB issued a subsequent Final Decision on June 10, 2006, which finalized the Part E denial of your claim because the case file did not contain evidence of your diagnosis with colon cancer.

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 this new evidence 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 Director's 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.

Exhibit 1

Your case file is being returned to the *[district office]* of DEEOIC. All future correspondence concerning your claim should be directed to:

DOL DEEOIC Central Mail Room Correspondence
P.O. Box 8306
London, KY 40742-8306

If you have any questions about the Director's Order, you may contact the *[district office]* at *[district office telephone number]*.

Sincerely,

[Name]
[Title]
DEEOIC

SUPERSEDED

EMPLOYEE: Joe C. Claimant
CLAIMANT: Joe C. Claimant
CASE ID: 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 of the EEOICPA. You claimed that you developed colon cancer as a result of your employment at a Department of Energy (DOE) facility.

Form EE-3, Employment History, includes information describing your work 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, you did not submit medical evidence to establish the diagnosis. As such, the district office issued four letters, dating from July of 2004 to December of 2004, requesting that you provide evidence to establish your diagnosis with colon cancer, and that the condition

Exhibit 1

resulted from your occupational exposure to a toxic substance. However, you provided no further evidence.

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 FAB finalized the recommendation in a Final Decision of March 6, 2005.

Subsequently, on May 1, 2006, the district office also issued a Recommended Decision to deny your claim for colon cancer under Part E; again citing insufficient evidence that you were diagnosed with the claimed illness. After an independent assessment and review, on June 10, 2006, the FAB issued a Final Decision finalizing the findings of the district office.

In a submission received by the district office on April 26, 2007, you provided a pathology report and additional medical records to confirm your diagnosis with colon cancer. Accordingly, the district office referred your case file 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 your diagnosis with 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 your diagnosis with colon cancer. Additionally, various medical reports and progress notes, ranging from 2002 to the present, establish your diagnosis and treatment for this illness. This new evidence invalidates the basis of the March 6, 2005 and June 10, 2006 Final Decisions denying your Part B and Part E claims. As such, it is necessary to vacate these prior Final Decisions so that the district office may proceed with a new examination of your eligibility under Part B and Part E for colon cancer.

CONCLUSION

The March 6, 2005 and June 10, 2006 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

SUPERSEDED

<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 I 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 the [district office] of DEEOIC. All future correspondence concerning your claim should be directed to:

DOL DEEOIC Central Mail Room Correspondence
P.O. Box 8306
London, KY 40742-8306

If you have any questions about this Denial of Reopening Request, you may contact the *[district office]* at *[district office telephone number]*.

Sincerely,

Director,
Division of Energy Employees
Occupational Illness Compensation

SUPERSEDED

EMPLOYEE: Jane B. Claimant
CLAIMANT: Jane B. Claimant
CASE ID: 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 developed breast cancer as a result of your employment at a covered Department of Energy (DOE) facility.

Form EE-3, Employment History, provides information that describes your employment 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 your diagnosis with breast cancer.

In development of your claims for benefits, the assigned Claims Examiner (CE) referred your case 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 CE 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. After its independent assessment, the FAB Hearing Representative finalized the denial of your claim in a Final Decision of December 7, 2005.

With regard to your claim under Part E, the CE 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 CE was unable to find a link between toxic exposure and breast cancer.

In addition to the SEM search, the CE requested that you provide additional information in support of your claim under Part E. Specifically, by letter dated June 30, 2006, the CE requested evidence to support a link between your claimed condition and exposure to a toxic substance. However, you did not provide any additional evidence for consideration.

As such, on August 15, 2006, the CE 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, a FAB CE finalized the recommendation denying your claim for benefits under Part E of the EEOICPA.

You requested a reopening of your claims under both Part B and Part E of the Act by fax received in the district office on December 9, 2008. Due to the nature of the request, the CE sent your case to the Office of the Director for reopening review.

DISCUSSION

After a careful assessment of your case record, I have concluded there is insufficient evidence to warrant reopening your claim. Your request for reopening cites several technical objections challenging NIOSH's dose reconstruction methodology. Furthermore, you object to the Part E decision by presenting a list of toxic substances, along with excerpts of scientific journals referencing human and non-human epidemiological studies.

To determine the probability of whether you sustained cancer in the performance of duty, the CE 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 you first were diagnosed with cancer. 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 that you reviewed the NIOSH Draft Report of Dose Reconstruction and that you agreed 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.

In your letter requesting reopening, you raise 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, for thoroughness, a DEEOIC Health Physicist conducted a May 20, 2009 reassessment of your case file along with a re-examination of the NIOSH dose reconstruction methodology. After his assessment, he reported that the assessment of your occupational radiation dose was factually accurate. He also noted that the dose reconstruction derived from an accurate application of dose reconstruction science and NIOSH policy. Therefore, the Health Physicist found no basis for a rework of the dose reconstruction, and as such, I do not have reason to support a reopening of 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. She opined that 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, I have no basis 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 that 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, I have to deny your December 9, 2008 request for reopening. 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

SUPERSEDED