

U.S. DEPARTMENT OF LABOR

OFFICE OF WORKERS' COMPENSATION PROGRAMS
DIVISION OF ENERGY EMPLOYEES OCCUPATIONAL
ILLNESS COMPENSATION
FINAL ADJUDICATION BRANCH



EMPLOYEE: [Name Deleted]
CLAIMANT: [Name Deleted]
FILE NUMBER: [Number Deleted]
DOCKET NUMBER: 20200904-50023826-3
DECISION DATE: December 23, 2020

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), 42 U.S.C. § 7384 *et seq.* For the reasons stated below, your claim for impairment benefits under Part E is accepted based on Alzheimer's disease.

STATEMENT OF THE CASE

On June 30, 2020, FAB earlier issued a final decision accepting your claim under Part E of EEOICPA for Alzheimer's disease. In that final decision, it was determined that you were a covered Department of Energy (DOE) contractor employee who had contracted Alzheimer's disease through toxic substance exposure in the course of your covered employment at a DOE facility. Your authorized representative subsequently filed a claim for impairment benefits on your behalf based on your covered illness, and elected to have Dr. Charles G. Dye perform the impairment evaluation.

A completed impairment report from Dr. Dye was received on August 11, 2020. In that report, Dr. Dye reviewed your medical records and conducted an interview with you and the Director of Nursing at Avenir Memory Care, who provided a detailed description of your activities of daily living. Utilizing the American Medical Association's *Guides to the Evaluation of Permanent Impairment* (5th ed.) (*Guides*), and after affirming that you had reached maximum medical improvement for your Alzheimer's disease, Dr. Dye used Table 13-5 on page 320 of the *Guides* and applied these findings to Table 13-6 also on page 320 of the *Guides* in order to assign you a class 4 rating of 60%.

On September 4, 2020, the district office issued a recommended decision to award you \$150,000.00 for your whole-person impairment rating of 60%, after which your case was transferred to FAB for review of the recommended decision. You submitted a signed

statement waiving any objection to the recommended decision. You also completed a Form EN-16 indicating that you have not received any settlement or award from a claim or lawsuit related to the exposure for which you are eligible under EEOICPA, received any state workers' compensation benefits on account of your claimed illnesses, or pled guilty to or been convicted of any charges of fraud relating to benefits under any federal or state workers' compensation program.

FAB remanded your case to the district office on October 5, 2020, indicating that it could not determine whether your Alzheimer's disease was related to a documented physical dysfunction of the nervous system. FAB noted that the district office had not made a finding on this issue prior to asking Dr. Dye to perform the impairment evaluation, and that it should have advised Dr. Dye that the impairment evaluation must be based on Table 13-8 of Chapter 13 in the 5th Edition of the *Guides*. FAB thus directed the district office to determine if the claimed impairment originated from a documented physical dysfunction of the nervous system and whether an impairment evaluation could be performed using the 5th edition of the *Guides*. Upon completion of these development actions, FAB instructed the district office to issue a new recommended decision on your Part E claim for impairment benefits.

In response, the district office sent your case to the Policy Branch for an assessment of FAB's remand order. In response to this referral, the Policy Branch reviewed your case file, including the remand order, and a Director's Order dated December 8, 2020 was issued. The Director's Order noted that you had already submitted a report from Dr. Crane linking your Alzheimer's disease (a neurodegenerative disease) to your toxic substance exposure at the Y-12 Plant, and that FAB had used that report in its July 30, 2020 final decision to determine that you had provided sufficient evidence to establish that your Alzheimer's disease had an established link to your toxic substance exposure at the Y-12 Plant. The Director's Order further noted that in response to a request from the district office for a supplemental medical report, Dr. Dye had submitted an October 7, 2020 report in which he stated the following regarding your impairment rating:

It is not my job to make diagnoses or justify them for the Dept of Labor; my job is to use the [*Guides*] to rate the condition you had approved. Alzheimer's disease is a pathophysiologic process which involves isocortical neurodegeneration which produces a dementing illness. It is rated, according to the *Guides*, using the clinical dementia rating system in the chapter on the central and peripheral nervous system on page 320 and Tables 13-5 and 13-6. In fact, if you look on the same page at Example 13-21, it gives an example of rating Alzheimer's disease. The table you mentioned (Table 13-8) is for emotional and behavioral disorders which are psychiatric disorders not cognitive disorder[s] and is in no way appropriate to use in rating [**Employee**]. From my perspective, it is clear cut to which tables, etc. should be used in rating [**Employee**]'s covered condition, therefore I will not amend my rating of August 10, 2020.

The Director's Order concluded that Dr. Dye had provided a well-rationalized opinion in support of his 60% impairment rating due to Alzheimer's disease and gave a reasonable explanation as to why he did not use Table 13-8 of the *Guides* to establish your impairment due to Alzheimer's disease. It was based on this assessment that the Director's Order was issued, vacating the remand order and instructing FAB to use this order in finalizing the recommendation.

Based on my review of the evidence of record, I hereby make the following:

FINDINGS OF FACT

1. By final decision issued on June 30, 2020, your claim was accepted under Part E of EEOICPA for the covered illness Alzheimer's disease.
2. You subsequently filed a claim for impairment benefits based on your covered illness.
3. The medical evidence establishes that you have a whole-person impairment rating of 60% due to your Alzheimer's disease. The extent of impairment was determined in accordance with the 5th edition of the *Guides*.

Based on the above-noted findings of fact, I hereby also make the following:

CONCLUSIONS OF LAW

I have reviewed the evidence of record and the recommended decision issued by the district office on September 4, 2020, as well as the Director's Order dated December 8, 2020. Based on this review, I conclude that you are a covered DOE contractor employee who has been determined under 42 U.S.C. § 7385s-4 to have contracted the covered illness of Alzheimer's disease. In accordance with 42 U.S.C § 7385s-2(a)(1)(A) and 20 C.F.R. § 30.901, I have determined, based on the impairment evaluation of Dr. Dye and the other medical evidence of record, that you have a whole-person impairment rating of 60% resulting from your covered illness.

Based on this rating, you are entitled to an award of impairment benefits under Part E of \$150,000.00, based on \$2,500.00 for each percentage point (60%) of impairment.

Washington, DC

Matt Buehrle
Hearing Representative
Final Adjudication Branch