



EMPLOYEE: [Name Deleted]
CLAIMANT: [Name Deleted]
CASE ID NUMBER: [Number Deleted]
DOCKET NUMBER: 20220201-12530-10
DECISION DATE: February 10, 2022

NOTICE OF FINAL DECISION

This decision of the Final Adjudication Branch (FAB) concerns the above-noted claim for survivor benefits under the Energy Employees Occupational Illness Compensation Program Act of 2000, as amended (EEOICPA), 42 U.S.C. § 7384 *et seq.* For the reasons set forth below, FAB accepts the claimant's Part B claim for the employee's glioblastoma (brain cancer) and awards the claimant compensation in the amount of \$150,000.00.

STATEMENT OF THE CASE

On October 10, 2014, the claimant filed a claim for survivor benefits under Parts B and E¹ for the employee's brain cancer. In support of her claims, the claimant submitted: (1) the employee's South Carolina death certificate, which indicated that he had died on September 29, 2014 and that the claimant was his spouse; and (2) a South Carolina marriage certificate showing that the claimant married the employee on March 6, 1971.

During the adjudication of the claims that the employee himself had filed before his death, the employee submitted both an employment history form in which he indicated that he worked for "E.I. Dupont/Bechtel" at the Savannah River Site (SRS), and a September 11, 2012 occupational history questionnaire in which he indicated that he worked at the SRS for "E.I. Dupont" from April 1975 through 1988 and for "Bechtel Construction" from 1988 through 1999. Based on development completed for the employee's claim, the district office established that he worked as a truck driver at the SRS from January 1, 1974 through November 1, 1999, and that he had been diagnosed with brain cancer in July 2014.

Although a class of SRS employees had been added to the Special Exposure Cohort (SEC) in 2012, the employee did not qualify as a member of that class because he did not work at least 250 workdays at the SRS from January 1, 1953 through September 30, 1972, as required. Thus, the claimant's Part B claim was referred to the National Institute for Occupational Safety and

¹ On September 21, 2018, FAB issued a final decision accepting the claimant's Part E claim for survivor benefits.

Health (NIOSH) for a dose reconstruction. Based upon the radiation dose estimates that NIOSH provided, FAB ultimately concluded that there was a less than 50% probability that the employee's brain cancer was caused by his employment at the SRS, and issued a November 19, 2018 final decision denying the claimant's Part B survivor claim. This decision became final on March 5, 2019 when FAB denied the claimant's subsequent request for reconsideration.

Effective September 17, 2021, another class of employees who worked at the SRS was added to the SEC as defined below:

All construction trade employees of Department of Energy subcontractors [excluding employees of the following prime contractors who worked at the Savannah River Site in Aiken, South Carolina, during the specified time periods: E. I. du Pont de Nemours and Company, October 1, 1972, through March 31, 1989; and Westinghouse Savannah River Company, April 1, 1989, through December 31, 1990], who worked at the Savannah River Site from October 1, 1972, through December 31, 1990, for a number of work days aggregating at least 250 work days, occurring either solely under this employment or in combination with work days within the parameters established for one or more other classes of employees included in the Special Exposure Cohort.

On October 13, 2021, the claimant's representative called the district office and asserted that the employee qualified for membership in the above new SEC class, based on his allegation that "Bechtel" was both the employee's employer and a Department of Energy (DOE) subcontractor at the SRS. In support of these contentions, the representative submitted an October 26, 2021 letter that included an excerpt from a book titled "Savannah River Site at Fifty," which noted that Westinghouse Savannah River Company officially replaced E. I. du Pont de Nemours and Company as the prime contractor at the SRS on April 1, 1989, and that pursuant to a contract with Westinghouse Savannah River Company, Bechtel National, Inc. became the prime construction and engineering subcontractor at the site.

Thereafter, the district office pursued additional development on this issue and obtained: (1) a September 8, 1988 press release printed in The Augusta Chronicle stating that "Westinghouse was the main contractor [at the SRS] and was to team with Bechtel National Inc., which will be the main subcontractor for architectural construction and engineering services"; and (2) a DOE-Inspector General report titled "Inspection of Westinghouse Savannah River Company Fees for Managing and Operating the Savannah River Site" issued on August 3, 1995, which states in pertinent part:

In 1988, Westinghouse Electric Corporation competed against Martin Marietta Corporation for a contract to manage and operate the Department of Energy's Savannah River Site (SRS) near Aiken, South Carolina. DOE selected Westinghouse as the replacement contractor on September 8, 1988. A five- and one-half-year contract, Contract No. DE-AC09-89SR18035, was subsequently signed by DOE and the Westinghouse Savannah River Company [WSRC], to commence on April 1, 1989. Under Clause H.24, Recognition of Performing Entity, of WSRC's contract with DOE, Bechtel Savannah River, Inc. (BSRI) was

specified as part of the “entity” which manages and operates SRS. BSRI is responsible for certain elements of WSRC’s statement of work, to include design and construction. Although BSRI is legally a subcontractor to WSRC, BSRI personnel are integrated within the overall WSRC organization.

Also, the district office requested the employee’s Social Security Administration (SSA) itemized statement of earnings for the years 1974 through 1999, which it received on November 1, 2021. That earnings report showed that the employee worked for E. I. du Pont de Nemours and Company from 1974 through 1989, and for “Bechtel Savannah River Inc” from 1989 through 1999.

In light of the above, the Assistant District Director of the Cleveland district office issued a January 11, 2022 order that vacated FAB’s prior November 19, 2018 decision, which became final on March 5, 2019, so that the district office could issue a new recommended decision under Part B. On January 26, 2022, the claimant submitted a signed EN-16 Form, declaring that she has neither filed a tort suit nor received any settlement or compensation in connection with the employee’s brain cancer. The claimant also declared that she has not filed for or received any state workers’ compensation benefits, and that she has never pled guilty to or been convicted of any charges in connection with an application for or receipt of either federal or state workers’ compensation. Lastly, the claimant declared that she does not know of any other person who may be eligible to receive compensation, as a survivor of the employee, under EEOICPA.

On February 1, 2022, the Cleveland district office issued a recommended decision to accept the claimant’s Part B claim on the ground that the employee qualifies as a member of the class of employees added to the SEC and was diagnosed with brain cancer, a “specified” cancer. Along with that recommendation, the district office informed the claimant that she had 60 days to file objections to the recommended decision or to submit a waiver of objections. On February 8, 2022, FAB received the claimant’s signed statement waiving any and all objections to the February 1, 2022 recommended decision.

Based on a review of this evidence, the undersigned makes the following:

FINDINGS OF FACT

1. On October 10, 2014, the claimant filed a claim for survivor benefits under Part B for the employee’s brain cancer.
2. The employee was diagnosed with brain cancer, a “specified” cancer, in July 2014.
3. The employee worked at the SRS for Bechtel Savannah River, Inc., a DOE subcontractor in the construction trade, from April 1, 1989 through November 1, 1999.
4. The employee’s covered employment totals at least 250 workdays between the dates October 1, 1972 through December 31, 1990 at the SRS.

5. The claimant was married to the employee from March 6, 1971 through the date of his death on September 29, 2014.

Based on the above findings of fact, the undersigned also hereby makes the following:

CONCLUSIONS OF LAW

Pursuant to § 30.316(a) of the EEOICPA regulations, “if the claimant waives any objections to all or part of the recommended decision, the FAB may issue a final decision accepting the recommendation of the district office, either in whole or in part. . . .” 20 C.F.R. § 30.316(a) (2019). On February 8, 2022, FAB received the claimant’s waiver of objections to the February 1, 2022 recommended decision.

In order to establish a compensable claim under Part B of EEOICPA based on an employee’s cancer diagnosis, the evidence in the file must establish that the employee is a “covered employee with cancer” under § 73841(9) of EEOICPA. An individual meets the definition of a “covered employee with cancer” under § 73841(9)(A) if he or she is a member of the SEC and has been diagnosed with a “specified” cancer after beginning covered employment at a DOE facility.

As noted in EEOICPA Circular No. 21-03 (issued September 17, 2021), effective September 17, 2021, another class of employees who worked at the SRS was added to the SEC as defined below:

All construction trade employees of Department of Energy subcontractors [excluding employees of the following prime contractors who worked at the Savannah River Site in Aiken, South Carolina, during the specified time periods: E. I. du Pont de Nemours and Company, October 1, 1972, through March 31, 1989; and Westinghouse Savannah River Company, April 1, 1989, through December 31, 1990], who worked at the Savannah River Site from October 1, 1972, through December 31, 1990, for a number of work days aggregating at least 250 work days, occurring either solely under this employment or in combination with work days within the parameters established for one or more other classes of employees included in the Special Exposure Cohort.

The evidence in the case file shows that Bechtel Savannah River, Inc. was a DOE subcontractor in the construction trades at the SRS starting on April 1, 1989 through at least December 31, 1990. SSA records show that the employee earned wages from Bechtel Savannah River, Inc. starting in 1989 through 1999. Based on this evidence, there is sufficient documentation to establish that the employee worked for a DOE subcontractor in the construction trades at the SRS from April 1, 1989 through November 1, 1999, which constitutes at least 250 workdays at the SRS during the new SEC period.

In addition, the evidence shows that the employee was diagnosed with brain cancer in July 2014. Brain cancer (diagnosed at least five years after first exposure) is a “specified” cancer under 20 C.F.R. § 30.5(gg)(5)(iii)(L). Accordingly, because the employee was diagnosed with “specified”

cancer of the brain and qualifies as a member of the class of employees added to the SEC, he is a “covered employee with cancer” under § 7384l(9)(A) of EEOICPA. Furthermore, the claimant is the surviving spouse of the employee, as defined by § 7384s(e)(3)(A).

Since the employee meets the definition of a “covered employee with cancer,” FAB concludes that the claimant’s Part B claim for survivor benefits based on the employee’s brain cancer is accepted, and that the claimant is entitled to lump-sum compensation in the amount of \$150,000.00 under Part B of EEOICPA.

Jacksonville, FL

Robert Felicioni
Hearing Representative
Final Adjudication Branch