



**EMPLOYEE:** [Name Deleted]  
**CLAIMANT:** [Name Deleted]  
**CASE ID:** [Number Deleted]  
**DOCKET NUMBER:** 20230103-50027853-2  
**DECISION DATE:** June 27, 2023

**NOTICE OF FINAL DECISION**

This decision of the Final Adjudication Branch (FAB) concerns your claim under Parts B and E of 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 benefits under Parts B and E for breast cancer is accepted. However, a decision on your claim under Parts B and E for chronic lymphocytic leukemia is deferred, pending further development by the district office.

**STATEMENT OF THE CASE**

On June 19, 2020, you filed a claim for benefits under Parts B and E of EEOICPA, alleging that you developed breast cancer as a result of your employment as a pilot at the Hangar 481 facility in Albuquerque, New Mexico working for Ross Aviation, Inc.<sup>1</sup> You stated on your employment history form that you transported personnel and cargo to and from DOE facilities, particularly the Los Alamos National Laboratory (LANL).

In support of your claim, you provided a medical report which confirmed that you were diagnosed with breast cancer on January 4, 2017. Also, the district office obtained your earnings record from the Social Security Administration that showed that you worked for Ross Aviation, Inc. from 1987 to 2006, and employment history affidavits indicated that your primary work location was Hangar 481. In addition, you submitted a flight summary/history, wherein you indicated that you routinely piloted flights from Albuquerque to LANL between July 27, 1987 and June 5, 2006, and flight logbooks showed that you flew to DOE facilities as part of your official duties.

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<sup>1</sup> Hangar 481 is a covered Department of Energy (DOE) facility from March 1, 1984 through February 29, 1996. Ross Aviation was the management and operations contractor for that site, which was located at the Albuquerque International Airport. DOE contracted with Ross Aviation, Inc. to manage and operate Hangar 481 on the premises of the Kirtland Air Force Base for the convenience of the adjacent Sandia National Laboratory, and to provide air transportation services between multiple DOE facilities.

Based on that evidence, the district office determined that you were onsite at LANL for 354 workdays during a timeframe when LANL was designated as a Special Exposure Cohort (SEC) site.<sup>2</sup> The district office determined that you spent your time at LANL performing a “covered service,” reasoning that your work duties as a pilot were covered by the contract that Ross Aviation, Inc. had with DOE. Therefore, the district office issued a January 3, 2023 recommended decision to accept your claim for breast cancer under Parts B and E pursuant to the SEC class for certain DOE contractor employees at LANL.

Then, FAB reviewed the claim and issued a remand order on February 9, 2023 to return your claim to the district office for additional consideration of the issue of whether the duties that you performed at LANL constituted covered employment as a DOE contractor employee. The district office referred the matter to the Director of the Division of Energy Employees Occupational Illness Compensation, and after careful assessment of the case file, the Director issued a June 5, 2023 order vacating FAB’s February 9, 2023 remand order.

In her order, the Director referenced § 30.5(x) of the EEOICPA regulations, which defines a DOE contractor employee as follows:

- (1) An individual who is or was in residence at a DOE facility as a researcher for one or more periods aggregating at least 24 months; or
- (2) An individual who is or was employed at a DOE facility by:
  - (i) An entity that contracted with the DOE to provide management and operating, management and integration, or environmental remediation at the facility;
  - (ii) A contractor or subcontractor that provided services, including construction and maintenance, at the facility; or
  - (iii) A civilian employee of a state or federal government agency if the agency employing that individual is found to have entered into a contract with DOE for the provision of one or more services it was not statutorily obligated to perform, and DOE compensated the agency for those services. The delivery or removal of goods from the premises of a DOE facility does not constitute a service for the purposes of determining a worker’s coverage under this paragraph (x).

Based on the above, the Director noted that there are certain situations where a person’s presence at a covered facility, even if the presence is in performance of their work duties, does not necessarily equate to a finding of covered employment under EEOICPA. For example, delivery drivers for courier services or third-party vendors (such as office supply companies), will not be covered, as they are deemed to be engaged solely in the delivery of goods, which is generally excluded from the definition of performing a covered service.

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<sup>2</sup> Effective December 7, 2012, a class of employees was added to the SEC who worked at LANL from January 1, 1976 through December 31, 1995. As such, claims for “specified” cancers filed by DOE contractor employees who worked at LANL for at least 250 days during the SEC period can be adjudicated without the need for a radiation dose reconstruction.

The Director then noted that there are several significant differences between your employment situation as compared to delivery drivers working for third-party vendors and courier services. Specifically, you were based at Hangar 481, a covered DOE facility, and were employed by Ross Aviation, Inc., which was the recognized contractor for management and operations at Hangar 481. In reviewing your employment history documentation, employment affidavits, flight logbook data and the transcript from a hearing that was conducted by FAB with regard to this claim, the Director concluded that you routinely piloted flights to the LANL facility, and that these flights were necessitated by the contract between DOE and Ross Aviation, Inc. Accordingly, the Director concluded that those factors all supported a finding that your employment was a service to LANL.

After a review of the evidence of record and the conclusions of the Director, FAB hereby makes the following:

### **FINDINGS OF FACT**

1. On June 19, 2020, you filed a claim for breast cancer under Parts B and E of EEOICPA.
2. You were diagnosed with breast cancer on January 4, 2017.
3. You were a DOE contractor employee for Ross Aviation at Hanger 481 between July 27, 1987 and November 27, 1995. During this time period, you made work-related flights to LANL on 354 days.
4. You were present for more than 250 days between the dates of July 27, 1987 and November 27, 1995 at LANL.

Based on the above findings of fact and the evidence of record, FAB also hereby makes the following:

### **CONCLUSIONS OF LAW**

Part B of EEOICPA provides benefits for a DOE contractor employee who is a member of the SEC and has been diagnosed with a “specified” cancer after beginning such employment. 42 U.S.C. § 7384l(9)(A). As noted above, a class of employees was added to the SEC who worked at LANL from January 1, 1976 through December 31, 1995 for an aggregate of at least 250 work days. The employment evidence is sufficient to establish that you engaged in at least 250 work days of DOE contractor employment at LANL, and therefore you are a member of this class. Accordingly, because you were also diagnosed with breast cancer, which is a “specified” cancer listed at 20 C.F.R. § 30.5(gg)(5)(iii)(B), you are a “covered employee with cancer” under § 7384l(9)(A) of EEOICPA. Therefore, your Part B claim for breast cancer is accepted and you are entitled to compensation in the amount of \$150,000.00 and to medical benefits for the treatment of this “occupational” illness, effective June 19, 2020.

Under § 7385s-4(a) of EEOICPA, if an employee has engaged in covered employment at a DOE facility and was determined under Part B to have contracted an “occupational” illness, the employee is presumed to have contracted a “covered” illness through exposure at that facility. Thus, your Part E claim for breast cancer is accepted, and you are entitled to medical benefits for the treatment of this covered illness, effective June 19, 2020.

Denver, Colorado

Robert A. Garcia  
Hearing Representative  
Final Adjudication Branch