



**EMPLOYEE:** [Name Deleted]  
**CLAIMANT:** [Name Deleted]  
**CASE ID NUMBER:** [Number Deleted]  
**DOCKET NUMBER:** 20230828-50031154-4  
**DECISION DATE:** September 27, 2023

### **NOTICE OF FINAL DECISION**

This decision by the Final Adjudication Branch (FAB) concerns your claim for 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, your claim for obstructive lung disease (OLD)<sup>1</sup> under Part E of EEOICPA is accepted for medical benefits retroactive to October 4, 2021.

### **STATEMENT OF THE CASE**

On October 4, 2021, you filed a claim for OLD under Part E of EEOICPA. You provided a July 17, 2015 pulmonary function test (PFT) that documented a moderate obstructive pulmonary impairment. You also submitted a March 26, 2019 narrative report in which Dr. Cedric F. McCord stated that your Building Trades National Medical Screening Program examination performed on January 9, 2019 demonstrated moderate OLD.

Records received from the Department of Energy (DOE) confirmed that you are a DOE subcontractor employee who worked at the Savannah River Site (SRS) intermittently from September 14, 2009 to October 26, 2009, from May 25, 2010 to December 20, 2010, from February 28, 2011 to November 30, 2011, from August 6, 2012 to October 8, 2012, from August 12, 2013 to December 2, 2014 and from January 26, 2015 to February 15, 2016. Your records indicate that you were employed as a construction carpenter. The SRS is a covered DOE facility from 1950 to the present.<sup>2</sup>

The district office reviewed case file evidence and consulted the Department of Labor's Site Exposure Matrices (SEM), an informational database, to determine your occupational exposures. Based on this research, the district office determined that OLD has a known link to exposure to toxins, including asbestos, cement, crystalline silicone dioxide and wood dust, and determined that you were potentially exposed to these toxins while working as a construction carpenter at the SRS. The results were confirmed by FAB.

---

<sup>1</sup> Obstructive lung disease (OLD) is synonymous with chronic obstructive lung disease (COPD).

<sup>2</sup> See <https://ehss.energy.gov/Search/Facility/findfacility.aspx>

The district office then referred the case to a certified Industrial Hygienist (IH) to determine the nature, extent and duration of your exposures to asbestos, cement, crystalline silicon dioxide and wood dust. In a report dated November 10, 2021, the IH opined that, as a construction carpenter at the SRS, you had the potential for significant exposures to these toxins, but that there was no available evidence to support a conclusion that your exposures would have exceeded existing regulatory standards.

By letter dated January 3, 2022, the district office informed you that it had received the IH's report and that the next step was to obtain a medical opinion as to whether your exposures were a significant factor in causing, contributing to, or aggravating your OLD. The district office explained that your case file records would be forwarded to a Contract Medical Consultant (CMC) for an opinion. After referring your claim to the CMC, the district office asked the CMC to review your medical records and exposure history, and to provide a medical opinion as to whether your work history at the SRS and your exposures identified by the IH were a significant factor that caused, contributed to, or aggravated your OLD. On January 5, 2022, the district office received the CMC's report, in which he explained that your chest x-ray, B reading and chest CTs did not document characteristics of asbestos exposure associated with asbestos-related disease or silica exposure associated with silicosis. The CMC also stated that prolonged, high exposure to wood dust is associated with COPD, but that your exposure was within existing regulatory levels and of short duration. The CMC concluded that it was not at least as likely as not that your exposures to asbestos, cement, crystalline silicon dioxide and wood dust during your employment at SRS were a significant factor in causing, contributing to, or aggravating your OLD.

On January 19, 2022, the district office issued a recommended decision to deny your claim for benefits under Part E of EEOICPA for OLD, based in part on the CMC's opinion. The case was then transferred to FAB for review of the recommended decision. Thereafter, you submitted additional evidence that the district office received as an objection to the recommended decision, which included a February 9, 2022 medical narrative signed by Dr. Stella E. Hines, a physician with the Building Trades National Medical Screening Program. Dr Hines explained that your low-dose CT scan performed on February 2, 2022 documented severe emphysema, which is usually caused by smoking or occupational exposure to dusts and fumes. Dr. Hines determined that your exposures to toxins, including asbestos and silica, aggravated, contributed to or caused your OLD. You also submitted a statement discussing your work duties and exposures, indicating that you were not furnished with personal protective equipment while performing your job.

FAB reviewed the medical opinions from the CMC and Dr. Hines, and found that the CMC's opinion was based on a review of your available medical record and the IH's report, and also referenced scientific literature to support his opinion. Conversely, FAB pointed out that Dr. Hines did not discuss your level of exposures or explain how she had concluded that your exposures were related to your employment. FAB then assigned greater probative value to the CMC's opinion. Accordingly, FAB issued an April 29, 2022 final decision to deny your claim for OLD under Part E, concluding that it was not at least as likely as not that exposures to toxic substances while employed at a DOE facility were a significant factor in aggravating, contributing to or causing your OLD.

Subsequently, you submitted a medical opinion dated May 23, 2022 from Dr. Marianne Cloeren, which was considered a timely request for reconsideration of the April 29, 2022 final decision. In her report, Dr. Cloeren reviewed your employment history, your exposures as determined by the IH and the CMC's opinion. Dr. Cloeren explained why she disagreed with the CMC's opinion and discussed how she had determined that your exposures were a significant factor in causing, contributing to, or aggravating your OLD. Dr. Cloeren cited scientific studies documenting increased risk of OLD after the implementation of occupational safety controls. She disagreed with the CMC's finding that asbestos and silica exposure can only occur if there is radiographic evidence of asbestos-related disease or silicosis. She cited scientific literature documenting that silica exposure can lead to OLD in the absence of radiological signs of silicosis. She further explained that asbestos-induced pulmonary decline is often seen without asbestos-related findings in medical imaging.

FAB determined that Dr. Cloeren's opinion was material to your claim. On July 6, 2022, FAB granted your request for reconsideration of your claim for OLD and remanded it to the district office for further development.

On July 13, 2022, the district office wrote to Dr. Cloeren and requested an updated opinion to include an explanation of the relationship between: (a) the level and extent of your known exposures; and (b) the development of your OLD. Dr. Cloeren was also asked to explain how your exposures caused, contributed to, or aggravated your OLD. The district office did not receive a response from Dr. Cloeren. On August 23, 2022, you were informed that the new medical evidence would be referred to a CMC for an updated causation opinion. Subsequently, your authorized representative submitted a medical opinion dated August 4, 2022 from Dr. Sammy Almashat. Dr. Almashat referenced your employment history and the IH report, and indicated that you had informed him that you built and removed scaffolding, and that you cleaned the work areas of painters, welders and sandblasters. You stated these areas were very dusty but that you were never told to wear a mask. You experienced a runny nose, sneezing and trouble breathing. Dr. Almashat stated that the processes of welding and sandblasting could cause significant airborne levels of asbestos, crystalline silicon dioxide and cement. Also, there was reportedly enough dust generated by welding and sandblasting that you had daily or near-daily exposure for four years to the dust. He concluded by opining that your exposure caused, contributed to, or aggravated your OLD.

The district office referred the new evidence from Dr. Almashat to the same CMC for review. In a supplemental opinion dated September 29, 2022, the CMC indicated that your exposures were within existing regulatory standards and that there was no medical evidence to suggest that your workplace exposures contributed to the development of your OLD. The CMC reiterated that it was not at least as likely as not that your exposures to asbestos, cement, crystalline silicon dioxide and wood dust during your employment at the SRS were a significant factor in aggravating, contributing to, or causing your OLD.

On October 6, 2022, the district office issued a recommended decision to deny your claim for benefits under Part E for OLD. In its recommendation, the district office reviewed the reports of Drs. Cloeren, Almashat and the CMC, and determined that the evidence was not sufficient to

establish that your exposures to toxic substances at the SRS were a significant factor in causing, contributing to, or aggravating your OLD.

On November 17, 2022, FAB received your authorized representative's timely objection to the above recommended decision and a request for an informal hearing. A telephone hearing was held on January 9, 2023, where your authorized representative presented your objections and arguments. On March 27, 2023, FAB issued a final decision to deny your claim for OLD under Part E of the Act, on the ground that it gave greater probative value to the CMC's opinions.

Your case was then referred to the Director for review. On June 21, 2023, the Director issued an order that reopened and vacated the March 27, 2023 final decision. In support of her decision to reopen that final decision, the Director thoroughly reviewed the medical evidence in the case file and determined that the conflicting medical opinions of Dr. Cloeren and the CMC were actually of equal probative value and that a referee opinion from a physician in an appropriate specialty was needed to resolve the conflict. Upon return of your case file, the district office asked Dr. Akshay Sood, a board-certified pulmonologist and specialist in occupational medicine, to review your medical records and the varying medical opinions, and to then provide a medical opinion as to whether your exposures were a significant factor in aggravating, contributing to, or causing your OLD.

In a report dated July 10, 2023, Dr. Sood indicated that the conflict in medical opinions centered around a difference in interpretation of the characteristics of asbestos, cement, crystalline silicon dioxide and wood dust exposures documented in diagnostic tests regarding COPD. After his review of the materials, Dr. Sood agreed with Drs. Cloeren and Almashat, citing studies where exposures to asbestos and silica do not always show up radiographically. He also cited studies documenting significantly increased mortality due to COPD in construction workers exposed to wood dust. Lastly, Dr. Sood concluded that your self-reported history of exposure was credible, and opined that your exposures to asbestos, cement, crystalline silicon dioxide and wood dust were a significant factor in contributing to or aggravating your COPD.

Your authorized representative submitted a signed statement that you have not received any settlement or award from a lawsuit or state workers' compensation claim connected with the claimed illness(es) or toxic exposures, and that you have neither pled guilty to nor been convicted of state workers' compensation fraud.

On August 28, 2023, the district office issued a recommended decision to accept your claim for medical benefits under Part E of the Act based on OLD. The district office determined that the evidence established that it was at least as likely as not that exposures to toxic substances while employed at a DOE facility were a significant factor in aggravating, contributing to, or causing your OLD.

Your case was sent to FAB for an independent decision on the appropriateness of the recommended decision. The FAB received written notification that you waived all objections to the recommended decision.

After considering the evidence of record, FAB hereby makes the following:

## **FINDINGS OF FACT**

1. On October 4, 2021, you filed a claim for benefits under Part E of EEOICPA based on OLD.
2. You were a DOE subcontractor employee who worked as a construction carpenter at the SRS intermittently from September 14, 2009 to February 15, 2016.
3. You were diagnosed with OLD on March 26, 2019.
4. The weight of the medical evidence is represented by the referee specialist's July 10, 2023 report, which establishes that your work-related exposures to toxic substances were a significant factor in aggravating or contributing to your OLD.

Based on the above-noted findings of fact, FAB hereby also makes the following:

## **CONCLUSIONS OF LAW**

The EEOICPA regulations provide that, if a claimant waives any objections to all or part of the recommended decision, FAB may issue a final decision accepting the recommendation of the district office, in whole or in part. 20 C.F.R. § 30.316(a) (2019). You waived the right to object to the findings of fact and conclusions of law contained in the recommended decision.

To qualify for benefits under Part E of EEOICPA, the evidence must establish that you were a DOE contractor or subcontractor employee who was diagnosed with a covered illness incurred as a result of exposure to a toxic substance at a DOE facility. 42 U.S.C. §§ 7385s(1), 7385s(2), 7385s-4(c).

As found above, the evidence establishes that you are a DOE subcontractor employee at the SRS who was diagnosed with OLD. A certified IH determined that you had potential for significant exposures to asbestos, cement, crystalline silicon dioxide and wood dust. Also as discussed above, the record contained conflicting medical opinions on the potential relationship between your workplace exposures and your diagnosed condition. On one side of this conflict, the CMC provided medical opinions that your exposures were not sufficient to have caused, contributed to, or aggravated your OLD, and on the other side Drs. McCord, Hines, Almashat and Cloeren provided medical opinions supporting your claim.

With respect to this issue, the regulations state that "If a conflict exists between the medical opinion of the employee's physician and the medical opinion of a second opinion physician, [or] an OWCP medical adviser or consultant. . .OWCP shall appoint a third physician. . .to make an examination. . . . This is called a referee examination. . . . OWCP will select a physician who is qualified in the appropriate specialty and who has had no prior connection with the case." 20 C.F.R. § 30.411(b). In your case, since there was a conflict of medical opinions, the district office referred your case to a referee specialist in the appropriate specialty. Dr. Sood reviewed the medical records, the IH's assessment and the medical reports in your case file, and found that

your workplace exposures to asbestos, cement, crystalline silicon dioxide and wood dust were “a significant factor in contributing to, or aggravating [your] COPD but not causing the disease.”

The opinion of a referee specialist who was selected to resolve a conflict in the medical evidence is granted special weight; once the referee has fully considered the arguments presented by both sides, the opinion of the referee is considered conclusive. Federal (EEOICPA) Procedure Manual, Chapter 16.15a (Version 7.1). FAB has reviewed the conflicting medical opinions and the report of the referee specialist Dr. Sood and concludes that the report of the referee specialist is conclusive here.

Therefore, FAB concludes that the evidence of record is sufficient to establish that it is at least as likely as not that your exposures to asbestos, cement, crystalline silicon dioxide and wood dust at a DOE facility were a significant factor in aggravating or contributing to your OLD. Your claim based on OLD under Part E of EEOICPA is accepted, and you are awarded medical benefits retroactive to October 4, 2021.

Seattle, Washington

Jennifer Madrid  
Hearing Representative  
Final Adjudication Branch