

**EMPLOYEE:** [Name Deleted]**CLAIMANT:** [Name Deleted]**CASE ID NUMBER:** [Number Deleted]**DOCKET NUMBER:** 20231211-50025412-3**DECISION DATE:** January 22, 2024**NOTICE OF FINAL DECISION**

This is the decision of the Final Adjudication Branch (FAB) concerning 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 stated below, your claim for benefits under Part E of EEOICPA is accepted based on impairment resulting from your covered illness of chronic obstructive pulmonary disease (COPD).

**STATEMENT OF THE CASE**

On October 15, 2019, you filed a claim under Part E of EEOICPA in which you alleged that you had developed COPD as a result of your employment at a Department of Energy (DOE) facility. You indicated on your claim form that you had filed a lawsuit based on exposure to asbestos and received a settlement or other award in connection with that lawsuit. The district office verified that you were diagnosed with COPD and that you were employed by DOE subcontractors at the Savannah River Site (SRS) from August 25, 1987 through January 13, 1988.

On February 7, 2020, the Jacksonville district office of the Division of Energy Employees Occupational Illness Compensation (DEEOIC) asked you to provide information regarding your asbestos-related settlement. In a response received on February 18, 2020, you stated that you did not have any documents regarding this settlement and that the attorney who represented you in that matter no longer practiced law and that most of his records were destroyed in Hurricane Katrina. The district office's subsequent attempt to contact this attorney was unsuccessful, and it thereafter administratively closed the claim on February 20, 2020.

On July 26, 2022, you requested that adjudication of your Part E claim continue and submitted a July 26, 2022 email that you received from your attorney that listed 25 entities and the settlement amount that you had received from each of them. Later, you provided a February 16, 2023 Form EN-16 in which you attested that you had received third-party settlements and indicated that you had originally sought those settlements on June 4, 1989, and also submitted: (1) a compilation of "Work Records" indicating that you worked for four of the 25 entities listed in your attorney's July 26, 2022 email, *i.e.*, Westinghouse in 1985 and again from September 27, 1978 through January 12, 1988, General Electric, Combustion Engineering, and Babcock and Wilcox; and (2) a statement noting that the other 21 entities were "vendors or suppliers for companies I worked

for.” Also, you provided documentation showing that you recently received two payments from the Pittsburgh Corning Bankruptcy Trust, which was an entity listed in the July 26, 2022 email.

Despite this evidence showing that you had received settlements based on the same exposure for which compensation was potentially payable under Part E, the Jacksonville district office issued a recommended decision on February 24, 2023 to accept your Part E claim for COPD, without applying any offset of your settlements. In a March 22, 2023 final decision consistent with this recommendation, FAB concluded that no offset was required “since your lawsuit filed on June 4, 1989, alleges exposures of asbestos during employment at non-DOE facilities. . . .”

On May 10, 2023, you submitted a request for impairment benefits and designated Dr. Norman Walton as the physician who would perform the impairment evaluation. Based on a June 22, 2023 evaluation by Dr. Walton, the district office issued a June 27, 2023 recommended decision to award you \$150,000.00 in impairment benefits under Part E for your 60% whole-person impairment rating and did not apply any offset. However, on July 31, 2023, FAB issued an order remanding your claim to the district office for further development since the evidence in the case file indicated that you had received money for your exposure to asbestos at the SRS.

Thereafter, the district office again asked you for additional information regarding your receipt of the settlements and on August 9, 2023, you submitted another email you received from your attorney stating that there was “no record of judicial proceeding of settlements or any court documents showing settlement amounts, attorney fees or expenses.” The attorney also indicated that his contingency fee was 40% and that there were no expenses associated with your asbestos settlements.

Thereafter, your case file was referred to DEEOIC’s Policy Branch for guidance on these issues. On November 20, 2023, the Director of DEEOIC issued an order noting that you had received settlement payments from asbestos bankruptcy trusts, and vacated the portion of the March 22, 2023 final decision that incorrectly concluded that no offset was required in your claim for Part E benefits. The Director returned your case file to the district office to properly calculate both the amount by which your pending impairment award had to be offset to reflect the settlement payments and the remaining balance payable to you, while leaving FAB’s prior acceptance of your Part E claim for COPD intact.

Accordingly, the Jacksonville district office issued a recommended decision on December 11, 2023, in which it again concluded that you have a whole-person impairment rating of 60% resulting from your covered illness and recommended an impairment award of \$150,000.00. With respect to your recovery of third-party settlements, the district office noted that you did not file a “lawsuit” in court; rather, you instead filed administrative claims with asbestos bankruptcy trusts due to your exposure to asbestos. Based on these findings, the district office also found that your potential impairment award was subject to an offset of \$22,927.80, and that the balance due to you would be \$127,072.20 ( $\$150,000.00 - \$22,927.80 = \$127,072.20$ ). Your case was then transferred to FAB for issuance of a final decision.

You submitted a signed statement waiving any objection to the recommended decision and reaffirming that you have not received any further tort settlements or any state workers’

compensation payments related to your covered illness. Based on my review of the recommended decision and the evidence of record, I hereby make the following:

### **FINDINGS OF FACT**

1. You are a DOE subcontractor employee and were awarded benefits under Part E of EEOICPA for the covered illness of COPD.
2. Your exposure to asbestos at the SRS from August 25, 1987 through January 13, 1988 contributed to or aggravated your COPD.
3. You filed a Part E claim for impairment benefits on May 10, 2023.
4. You are at maximum medical improvement for your COPD and have a current whole-person impairment rating of 60%.
5. Your entitlement to benefits under Part E for COPD is subject to an offset of \$22,927.80, based on settlements you received from asbestos bankruptcy trusts related to your exposure to asbestos at the SRS.

Based on the above 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 December 11, 2023. You waived any objections to the recommended decision.

The evidence establishes that you are a covered DOE subcontractor employee who has been determined under 42 U.S.C. § 7385s-4 to have contracted the “covered” illness of COPD. I conclude that the impairment evaluation of Dr. Walton satisfies the requirements of 20 C.F.R. § 30.901 (2019) and establishes a whole-person impairment rating of 60% resulting from your covered illness. You are entitled to \$2,500.00 for each percentage point of impairment, in accordance with 42 U.S.C. § 7385s-2(a)(1)(B).

While you are entitled to \$150,000.00 for this rating ( $\$2,500.00 \times 60 = \$150,000.00$ ), EEOICPA provides that payment of compensation to an individual must be offset to reflect any payments made pursuant to a final award or settlement on a claim that is based on injuries incurred by that individual on account of the exposure for which compensation is payable under EEOICPA. 42 U.S.C. § 7385.

FAB previously determined that your covered illness of COPD was related to your exposure to asbestos during your employment at the SRS from August 25, 1987 through January 13, 1988. Although you did not file a “lawsuit” based on that same exposure, there is evidence in the file establishing that you filed administrative claims with 25 bankruptcy trusts based on your occupational exposure to asbestos. However, you were unable to provide any of the claim forms

that were filed with the individual trusts, which require claimants to identify where and when their exposures occurred.

In lieu of such administrative claim forms, I used the “Work Records” that you attached to your February 16, 2023 Form EN-16 to determine where and when you were exposed to asbestos, since you certified on your EN-16 that the statements you made therein were “true, complete and correct” to the best of your knowledge. In those records you stated that you had worked at “Westinghouse” from September 27, 1987 through January 12, 1988, which is during the same time you worked at the SRS. Moreover, Westinghouse Electric Corporation was the prime contractor at the SRS when you filed your asbestos bankruptcy trust claims in 1989. Although “Westinghouse” is not the actual name of the trust, the available evidence indicates that you received a \$1,300.00 settlement from “Westinghouse” for your exposure to asbestos during your verified employment at the SRS that needs to be offset against your Part E impairment award.

With regard to your assertion in your EN-16 attachments that you also worked for General Electric, Combustion Engineering, and Babcock and Wilcox, the case file does not contain any evidence to support that such work occurred at the SRS. Thus, the settlements you received from those three trusts do not need to be offset against your Part E award. However, as for the other 21 settlements that you received, you indicated in your EN-16 attachments that those companies were “vendors or suppliers for companies I worked for,” but you did not match any of those vendors and suppliers with either General Electric, Combustion Engineering or Babcock and Wilcox. Accordingly, I have determined that those other 21 settlements were based, at least in part, on your exposure to asbestos at the SRS and therefore also need to be offset against your impairment award.

Regarding the amount of offset required, the information you provided indicates that you received a total of \$44,713.00 in payments from the 25 asbestos bankruptcy trusts listed in your attorney’s July 26, 2022 email. As noted above, the settlements you received from General Electric, Combustion Engineering, and Babcock and Wilcox do not need to be offset against your Part E award. Thus, the settlements that you received from those companies, totaling \$6,500.00, must be subtracted from the \$44,713.00, resulting in a gross recovery of \$38,213.00 ( $\$44,713.00 - \$6,500.00 = \$38,213.00$ ). Only attorney fees (since there were no reported costs) are to be deducted from this figure, so by multiplying \$38,213.00 by 40% the result is \$15,285.20. By subtracting these attorney fees from the gross recovery, the amount of required offset is \$22,927.80 ( $\$38,213.00 - \$15,285.20 = \$22,927.80$ ).

Accordingly, I conclude that you are entitled to impairment benefits under Part E in the amount of \$127,072.20 ( $\$150,000.00 - \$22,927.80 = \$127,072.20$ ).

Greg Knapp  
Hearing Representative  
Final Adjudication Branch