

May 8, 2022

To Dr. Markowitz and Members of the Board:

My name is Elizabeth Brooks. I am an Authorized Representative for many former and current Department of Energy (DOE) employees throughout the country, primarily for the Nevada Test Site and other DOE Facilities in Nevada. What I will be addressing today is the subject of “Chronic silicosis claims under Part B of the EEOICPA and the need for revision of the Procedure Manual.”

Chronic Silicosis is an occupational lung disease caused by the inhalation of silica dust. Many of my Nevada clients have been diagnosed with chronic silicosis due the prevalence of silicon dioxide (crystalline) at DOE facilities located in the state of Nevada. Previously, all claimants employed at DOE facilities in Nevada where underground mining took place were given consideration for chronic silicosis under Part B of the Act due to congressional law in accordance with 42 U.S. Code 7384r. Separate treatment of chronic silicosis under Part B of the EEOICPA, which states, *“A covered employee shall, in the absence of substantial evidence to the contrary, be determined to have been exposed to silica in the performance of duty for the purposes of the compensation program if, and only if, the employee was present for a number of work days aggregating at least 250 work days during the mining of tunnels at a Department of Energy facility located in Nevada or Alaska for tests or experiments related to an atomic weapon.”*

The employment criteria for chronic silicosis under Part B, as set forth by congressional law, includes that first, employment must have been at a DOE facility in Nevada or Alaska with an aggregate of at least 250 work days, and second employment must have occurred during the mining of tunnels for tests or experiments related to an atomic weapon.

The mining of tunnels at DOE facilities in Nevada began in the 1960s when nuclear testing was taken underground. Underground, full-scale weapon detonations continued through the cold war and into the 1990s until a moratorium for large scale nuclear testing was implemented in October 1992. It has been assumed by some that active mining at the Nevada Test Site stopped at that time, however, active mining continued through approximately 2008 at the Yucca Mountain Characterization Site Project located within the Nevada Test Site, and more importantly, underground mining in support of tests and experiments related to atomic weaponry continued at the U1A Complex also located within the Nevada Test Site.

While it is not common knowledge to some, our nation’s atomic testing continues through what is known as subcritical nuclear experiments, which are referred to as “subcrits” by my clients. These subcritical atomic tests are a necessary component of the U.S. Department of Energy's Science Based Stockpile Stewardship Management Program. Subcritical experiments do not reach critical mass, nor do they produce an atomic yield, yet they are recognized as atomic tests and experiments. The first nuclear tests at the underground U1a Complex began in 1988 and continue to this day.

For many years, the DEEOIC approved claims for chronic silicosis under Part B for claimants employed after October 1992. However, on May 6, 2019, Federal EEOICPA Procedure Manual Version 3.1 was issued and the employment criteria for chronic silicosis under Part B was changed to require that a claimant must have been, *“Present for an aggregate of at least 250 work days during the mining of tunnels at a DOE facility located in Nevada or Alaska for tests or experiments related to an atomic weapon (Part B claims only). This tunnel work occurred through October 1992, at which time the unilateral moratorium on nuclear weapons testing went into effect.”* Since this change was made in Procedure Manual Version 3.1, all claimants with employment history that occurred at the Nevada Test

Site after October 1992, regardless of their aggregate work days, have been denied their claims for chronic silicosis under Part B, which appears to be contrary to the EEOICPA.

Atomic testing and experiments include more than just large-scale nuclear events reaching critical mass. As discussed, subcritical nuclear testing has continued at the Nevada Test Site after October 1992, and it is essential to our country's military readiness. Enclosed with my public comments are 3 printouts procured in January 2020 from the website of the Nevada National Security Site (NNSS), formerly known as the Nevada Test Site.

The Nevada National Security Site's publicly available website has stated, "*A primary mission of the NNSS is to help ensure that the nation's nuclear weapons stockpile remains safe, reliable, and secure from our enemies. To accomplish this, Stockpile Stewardship deploys a wide range of science and technologies, focused on experiments in weapons science and the potential for weapons dismantlement.*"

Regarding the DOE's current underground mining activities, NNSS additionally stated, "*The U1a Complex is an underground laboratory used for subcritical experiments to obtain information about the U.S. nuclear weapons stockpile.*", And, "*The underground facility is on one level, at the depth of the Ledoux test, and consists of horizontal tunnels and alcoves, which are approximately 1.4 miles collectively in length. The facility provides a high degree of safety of NNSS workers and the public, exceptional security for the experiments, and minimizes environmental impacts.*"

Pertaining to mining activities, NNSS also issued a press release at that time, (late 2019, early 2020), publishing that they had successfully lowered 115,000 pounds of new mining equipment down into U1a Complex to support the future expanding national security mission and augment the mining assets currently being used at the complex.

It is a fact that the mining of tunnels in support of atomic tests or experiments has persisted at the Nevada Test Site in Yucca Mountain, and specifically in the U1a Complex, well after October 1992. It is my request that the Advisory Board undertake discussions to review this information and recommend to DEEOIC that the Procedure Manual be reverted back to what it was prior to Version 3.1 so that claims for chronic silicosis under Part B may be adjudicated in a manner consistent with the criteria originally established by congressional law under the EEOICPA.

Many claimants with post October 1992 employment at DOE facilities in Nevada were approved for chronic silicosis under Part B prior the changes made in Procedure Manual Version 3.1 on May 6, 2019. It stands to reason, in light of the information published by NNSS supporting the continued occurrence of mining activities and atomic testing, that current claims for chronic silicosis under Part B should be treated equal to those approved under Part B prior to May 6, 2019, when the Procedure Manual was aligned with the original legislation passed by congress in the EEOICPA.

Thank you,

Elizabeth Brooks, R.N.  
Authorized Representative