

§ 30.221

EEOICPA, an employee or his or her survivor must show that:

(a) The employee is a civilian DOE employee, or a civilian DOE contractor employee, who was present for a number of workdays aggregating at least 250 workdays during the mining of tunnels at a DOE facility (as defined in §30.5(x)) located in Nevada or Alaska for tests or experiments related to an atomic weapon, and has been diagnosed with chronic silicosis (as defined in §30.5(j)); or

(b) The employee has been diagnosed with an injury, illness, impairment or disease that arose as a consequence of the accepted chronic silicosis.

§ 30.221 How does a claimant prove exposure to silica in the performance of duty?

(a) Proof of the employee's employment and presence for the requisite days during the mining of tunnels at a DOE facility located in Nevada or Alaska for tests or experiments related to an atomic weapon may be made by the submission of any trustworthy records that, on their face or in conjunction with other such records, establish that the employee was so employed and present at these sites and the time period(s) of such employment and presence.

(b) If the evidence shows that exposure occurred while the employee was employed and present at a facility during a time frame that is outside the relevant time frame indicated for that facility, OWCP may request that DOE provide additional information on the facility. OWCP will determine whether the evidence of record supports enlarging the relevant time frame for that facility.

(c) Records from the following sources may be considered as evidence for purposes of establishing proof of employment or presence at a covered facility:

(1) Records or documents created by any federal government agency (including verified information submitted for security clearance), any tribal government, or any state, county, city or local government office, agency, department, board or other entity, or other public agency or office.

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(2) Records or documents created as a byproduct of any regularly conducted business activity or by an entity that acted as a contractor or subcontractor to the DOE.

(d) For purposes of satisfying the 250 workday requirement of §30.220(a), the claimant may aggregate the days of service at more than one qualifying site.

§ 30.222 How does a claimant establish that the employee has been diagnosed with chronic silicosis or has sustained a consequential injury, illness, impairment or disease?

(a) A written diagnosis of the employee's chronic silicosis (as defined in §30.5(j)) shall be made by a medical doctor and accompanied by one of the following:

(1) A chest radiograph, interpreted by an individual certified by NIOSH as a B reader, classifying the existence of pneumoconioses of category 1/0 or higher; or

(2) Results from a computer assisted tomograph or other imaging technique that are consistent with silicosis; or

(3) Lung biopsy findings consistent with silicosis.

(b) An injury, illness, impairment or disease sustained as a consequence of accepted chronic silicosis covered by the provisions of §30.220(a) must be established with a fully rationalized medical report by a physician that shows the relationship between the injury, illness, impairment or disease and the accepted chronic silicosis. Neither the fact that the injury, illness, impairment or disease manifests itself after a diagnosis of accepted chronic silicosis, nor the belief of the claimant that the injury, illness, impairment or disease was caused by the accepted chronic silicosis, is sufficient in itself to prove a causal relationship.

ELIGIBILITY CRITERIA FOR CERTAIN URANIUM EMPLOYEES UNDER PART B OF EEOICPA

§ 30.225 What are the criteria for eligibility for benefits under Part B of EEOICPA for certain uranium employees?

In order to be eligible for benefits under this section, the claimant must establish the criteria set forth in either

paragraph (a) or paragraph (b) of this section:

(a) The Attorney General has determined that the claimant is a covered uranium employee who is entitled to payment of \$100,000 as compensation due under section 5 of RECA for a claim made under that statute (there is, however, no requirement that the claimant or surviving eligible beneficiary has actually received payment pursuant to RECA). If a deceased employee's survivor(s) has been determined to be entitled to such an award, his or her survivor(s), if any, will only be entitled to EEOICPA compensation in accordance with section 7384u(e) of the Act.

(b) The covered uranium employee has been diagnosed with an injury, illness, impairment or disease that arose as a consequence of the medical condition for which he or she was determined to be entitled to payment of \$100,000 as compensation due under section 5 of RECA.

§ 30.226 How does a claimant establish that a covered uranium employee has sustained a consequential injury, illness, impairment or disease?

An injury, illness, impairment or disease sustained as a consequence of a medical condition covered by the provisions of § 30.225(a) must be established with a fully rationalized medical report by a physician that shows the relationship between the injury, illness, impairment or disease and the accepted medical condition. Neither the fact that the injury, illness, impairment or disease manifests itself after a diagnosis of a medical condition covered by the provisions of § 30.225(a), nor the belief of the claimant that the injury, illness, impairment or disease was caused by such a condition, is sufficient in itself to prove a causal relationship.

ELIGIBILITY CRITERIA FOR OTHER CLAIMS UNDER PART E OF EEOICPA

§ 30.230 What are the criteria necessary to establish that an employee contracted a covered illness under Part E of EEOICPA?

To establish that an employee contracted a covered illness under Part E of the Act, the employee, or his or her

survivor, must show one of the following:

(a) That OWCP has determined under Part B of EEOICPA that the employee is a Department of Energy contractor employee as defined in § 30.5(w), and that he or she has been awarded compensation under that Part of the Act for an occupational illness;

(b) That the Attorney General has determined that the employee is entitled to payment of \$100,000 as compensation due under section 5 of RECA for a claim made under that statute (however, if a deceased employee's survivor has been determined to be entitled to such an award, his or her survivor(s), if any, will only be entitled to benefits under Part E of EEOICPA in accordance with section 7385s-3 of the Act);

(c) That the Secretary of Energy has accepted a positive determination of a Physicians Panel that the employee sustained an illness or died due to exposure to a toxic substance at a DOE facility under former section 7385o of EEOICPA, or that the Secretary of Energy has found significant evidence contrary to a negative determination of a Physicians Panel; or

(d)(1) That the employee is a civilian Department of Energy contractor employee as defined in § 30.5(w), or a civilian who was employed in a uranium mine or mill located in Colorado, New Mexico, Arizona, Wyoming, South Dakota, Washington, Utah, Idaho, North Dakota, Oregon or Texas at any time during the period from January 1, 1942 through December 31, 1971, or was employed in the transport of uranium ore or vanadium-uranium ore from such a mine or mill during that same period, and that he or she:

(i) Has been diagnosed with an illness; and

(ii) That it is at least as likely as not that exposure to a toxic substance at a Department of Energy facility or at a RECA section 5 facility, as appropriate, was a significant factor in aggravating, contributing to, or causing the illness; and

(iii) That it is at least as likely as not that the exposure to such toxic substance was related to employment at a Department of Energy facility or a RECA section 5 facility, as appropriate.