

§ 30.226

20 CFR Ch. I (4–1–12 Edition)

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.

(2) In making the determination under paragraph (d)(1)(ii) of this section, OWCP will consider:

(i) The nature, frequency and duration of exposure of the covered employee to the substance alleged to be toxic;

(ii) Evidence of the carcinogenic or pathogenic properties of the alleged toxic substance to which the employee was exposed;

(iii) An opinion of a qualified physician with expertise in treating, diagnosing or researching the illness claimed to be caused or aggravated by the alleged exposure; and

(iv) Any other evidence that OWCP determines to have demonstrated relevance to the relation between a particular toxic substance and the claimed illness.

§ 30.231 How does a claimant prove employment-related exposure to a toxic substance at a DOE facility or a RECA section 5 facility?

To establish employment-related exposure to a toxic substance at a Department of Energy facility or RECA section 5 facility as required by § 30.230(d), an employee, or his or her survivor(s), must prove that the employee was employed at such facility and that he or she was exposed to a toxic substance in the course of that employment.

(a) Proof of employment may be established by any trustworthy records that, on their face or in conjunction with other such records, establish that the employee was so employed and the time period(s) of such employment.

(b) Proof of exposure to a toxic substance may be established by the submission of any appropriate document or information that is evidence that such substance was present at the facility in which the employee was employed and that the employee came into contact with such substance. OWCP site exposure matrices may be used to provide probative factual evidence that a particular substance was present at either a DOE facility or a RECA section 5 facility.

§ 30.232 How does a claimant establish that the employee has been diagnosed with a covered illness, or sustained an injury, illness, impairment or disease as a consequence of a covered illness?

(a) To establish that the employee has been diagnosed with a covered illness as required by § 30.230(d), the employee, or his or her survivor(s), must provide the following:

(1) The name and address of any licensed physician who is the source of a diagnosis based upon documented medical information that the employee has or had an illness and that the illness may have resulted from exposure to a toxic substance while the employee was employed at a DOE facility or a RECA section 5 facility, as appropriate, and, to the extent practicable, a copy of the diagnosis and a summary of the information upon which the diagnosis is based; and

(2) A signed medical release, authorizing the release of any diagnosis, medical opinion and medical records documenting the diagnosis or opinion that the employee has or had an illness and that the illness may have resulted from exposure to a toxic substance while the employee was employed at a DOE facility or RECA section 5 facility, as appropriate; and

(3) To the extent practicable and appropriate, an occupational history obtained by a physician, an occupational health professional, or a DOE-sponsored Former Worker Program (if such an occupational history is not reasonably available or is inadequate, and such history is deemed by OWCP to be needed for the fair adjudication of the claim, then OWCP may assist the claimant in developing this history); and

(4) Any other information or materials deemed by OWCP to be necessary to provide reasonable evidence that the employee has or had an illness that may have arisen from exposure to a toxic substance while employed at a DOE facility or RECA section 5 facility, as appropriate.

(b) The employee, or his or her survivor(s), may also submit to OWCP other evidence not described in paragraph (a) of this section showing that the employee has or had an illness that