

§ 30.112

20 CFR Ch. I (4-1-05 Edition)

claimant also bears the burden of providing to OWCP all written medical documentation, contemporaneous records, or other records and documents necessary to establish any and all criteria for benefits set forth in these regulations.

(b) In the event that the claim lacks required information or supporting documentation, OWCP will notify the employee, survivor, and/or DOE of the deficiencies and provide an opportunity for correction of the deficiencies.

(c) Written affidavits or declarations, subject to penalty for perjury, by the employee, survivor or any other person, will be accepted as evidence of employment history and survivor relationship for purposes of establishing eligibility and may be relied on in determining whether a claim meets the requirements of the Act for benefits if, and only if, such person attests that due diligence was used to obtain records in support of the claim, but that no records exist.

(d) A claimant will not be entitled to any presumption otherwise provided for in these regulations if substantial evidence exists that rebuts the existence of the fact that is the subject of the presumption. Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. When such evidence exists, the covered employee or his or her survivor shall be notified and afforded the opportunity to submit additional written medical documentation or records.

§ 30.112 What kind of evidence is needed to establish covered employment and how will that evidence be evaluated?

(a) Evidence of covered employment may include: employment records; pay stubs; tax returns; social security records; and written affidavits or declarations, subject to penalty of perjury, by the employee, survivor or any other person. However, no one document is required to establish covered employment and a claimant is not required to submit all of the evidence listed above. A claimant may submit other evidence not listed above to establish covered employment. To be acceptable as evidence, all documents and records must

be legible. OWCP will accept photocopies, certified copies, and original documents and records.

(b) DOE shall certify that it concurs with the employment information provided by the claimant, that it disagrees with the information provided by the claimant, or, after a reasonable search of its records and a reasonable effort to locate pertinent records not already in its possession, it can neither concur nor disagree with the information provided by the claimant.

(1) If DOE certifies that it concurs with the employment information provided by the claimant, then the criterion for covered employment will be established.

(2) If DOE certifies that it disagrees with the information provided by the claimant or that after a reasonable search of its records and a reasonable effort to locate pertinent records not already in its possession it can neither concur nor disagree with the information provided by the claimant, OWCP will evaluate the evidence submitted by the claimant to determine whether the claimant has established covered employment by a preponderance of the evidence. OWCP may request additional evidence from the claimant to demonstrate that the claimant has met the criterion for covered employment. Nothing in this section shall be construed to limit OWCP's ability to request additional documentation.

(3) If the only evidence of covered employment is a self-serving affidavit and DOE either disagrees with the assertion of covered employment or cannot concur or disagree with the assertion of covered employment, then OWCP may reject the claim based upon a lack of evidence of covered employment.

§ 30.113 What are the requirements for written medical documentation, contemporaneous records, and other records or documents?

(a) All written medical documentation, contemporaneous records, and other records or documents submitted by an employee or his or her survivor to prove any criteria provided for in these regulations must be legible.

OWCP will accept photocopies, certified copies, and original documents and records.

(b) To establish eligibility, the employee or his or her survivor may be required to provide, where appropriate, additional contemporaneous records to the extent they exist or an authorization to release additional contemporaneous records or a statement by the custodian(s) of the record(s) certifying that the requested record(s) no longer exist. Nothing in this section shall be construed to limit OWCP's ability to require additional documentation.

(c) If a claimant submits a certified statement, by a person with knowledge of the facts, that the medical records containing a diagnosis and date of diagnosis of a covered medical condition no longer exist, then OWCP may consider other evidence to establish a diagnosis and date of diagnosis of a covered medical condition. However, if the certified statement is a self-serving document, OWCP may reject the claim based upon a lack of evidence of a covered medical condition.

§ 30.114 What kind of evidence is needed to establish a covered medical condition and how will that evidence be evaluated?

(a) Evidence of a covered medical condition may include: A physician's report, laboratory reports, hospital records, death certificates, x-rays, magnetic resonance images or reports, computer axial tomography or other imaging reports, lymphocyte proliferation testings, beryllium patch tests, pulmonary function or exercise testing results, pathology reports including biopsy results and other medical records. A claimant is not required to submit all of the evidence listed in this paragraph. A claimant may submit other evidence that is not listed in this paragraph to establish a covered medical condition. Nothing in this section shall be construed to limit OWCP's ability to require additional documentation.

(b) The medical evidence submitted will be used to establish the diagnosis and the date of diagnosis of the covered medical condition.

(1) For covered beryllium illnesses, additional medical evidence, as set

forth in § 30.207, is required to establish a beryllium illness.

(2) For chronic silicosis, additional medical evidence, as set forth in § 30.222, is required to establish chronic silicosis.

(3) For consequential injuries or illnesses, the claimant must also submit a physician's fully rationalized medical report showing the causal relationship between the resulting illness or injury and the covered medical condition.

(c) OWCP will evaluate the medical evidence in accordance with recognized and accepted diagnostic criteria used by physicians to determine whether the claimant has established the medical condition for which compensation is sought in accordance with the requirements of the Act.

SPECIAL PROCEDURES FOR CERTAIN
CANCER CLAIMS

§ 30.115 For those claims that do not seek benefits pursuant to the Special Exposure Cohort provisions, what will OWCP do once it determines that a covered employee (or a survivor of such an employee) has established that he or she contracted cancer under § 30.211?

(a) Other than claims solely for a non-radiogenic cancer listed by HHS at 42 CFR 81.30, OWCP will forward any such claimant's application package (including, but not limited to, Forms EE-1, EE-2, EE-3, EE-4 and EE-5, as appropriate) to HHS for dose reconstruction. At that point in time, development of the claim by OWCP is suspended.

(1) This package will include OWCP's initial findings in regard to the covered employee's diagnosis and date of diagnosis, as well as any employment history compiled by OWCP (including information such as dates and locations worked, and job titles). The package, however, does not constitute a recommended or final decision by OWCP on the claim.

(2) HHS will then reconstruct the covered employee's radiation dose, following such further development of the employment history as it may deem necessary, and provide OWCP, DOE and the claimant with the final dose reconstruction report. The final dose reconstruction record will be delivered to