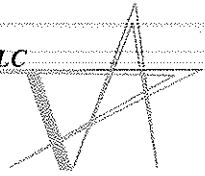


COMMONWEALTH ENVIRONMENTAL SERVICES, LLC  
"A Native American Woman Owned Company"



# Fax Cover Sheet

To: Edward Feeny

From: Gary S. Vander Boegh

Fax: (202) 513-6401

Date: 9-20-10

Phone:

Pages: \_\_\_ Pages including the Cover Sheet

Re: Robert W. Jeffords

CC:

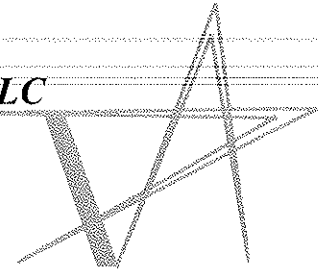
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**Comments:**

ADDITIONAL FOR CBD ATTACHED

**COMMONWEALTH ENVIRONMENTAL SERVICES, LLC**

"A Native American · Woman Owned Company"



Gary Vander Boegh, Vice President  
Commonwealth Environmental Services, LLC  
4645 Village Square Drive, St. F  
Paducah, Kentucky 42001  
Telephone: (270) 450-0850  
Facsimile: (270) 450-0858

September 20, 2010

U. S. Department of Labor,  
Frances Perkins Building, 200 Constitution Ave., NW  
Room S-2018  
Washington, DC 20210  
Facsimile (904) 357-4704

Attention: FAB Hearing Representative Edward W. Feeny

File Number: XXX-XX-7145  
Employee: Robert W. Jeffords  
Claimant: Evelyn Jeffords

Dear Mr. Feeny,

As "Authorized Representative" (AR) for claimant Evelyn Jeffords, I hereby respectfully submit the attached additional evidence that supports of the claimant's pre-1993 criteria for Chronic Beryllium Disease (CBD) based on statutory requirements 42 USC § 73841 (13) (B) as established as follows:

- (B) For diagnoses before January 1, 1993, the presence of—
- (i) **occupational or environmental history**, or epidemiologic evidence of beryllium exposure; and
  - (iii) **any three of the following criteria:**
    - (I) Characteristic chest radiographic (or computed tomography (CT)) abnormalities.**
    - (II) Restrictive or obstructive lung physiology testing or diffusing lung capacity defect.**
    - (III) Lung pathology consistent with chronic beryllium disease.
    - (IV) Clinical course consistent with a chronic respiratory disorder.**
    - (V) Immunologic tests showing beryllium sensitivity (skin patch test or beryllium blood test preferred).

The Paducah Gaseous Diffusion Plant was a DOE facility from 1952 to July 28, 1998 and July 29, 1998 to present (remediation) where radioactive and beryllium materials were present, according to the Department of Energy Office of Worker Advocacy Facility List (<http://www.hss.energy.gov/HealthSafety/FWSP/Advocacy/faclist/findfacility.cfm>).

The Department of Labor, per Docket Numbers 60701-2005 dated July 11, 2005, established that the claimant Robert W. Jeffords had **ONLY** met criteria's II (Restrictive or obstructive lung physiology testing or diffusing lung capacity defect) and IV (Clinical course consistent with a chronic respiratory disorder), therefore denying Mr. Jeffords claim for compensation for CBD. However, Mrs. Evelyn Jeffords presents additional evidence that complies with the first criteria (I) Characteristic chest radiographic (or computed tomography (CT)) **abnormalities**. Per Chapter 2-700.4 (September 2004) of the Federal (EEOICPA) Procedure Manual, "TO DETERMINE WHETHER TO USE THE PRE OR POST 1993 CBD CRITERIA, THE MEDICAL EVIDENCE MUST DEMONSTRATE THAT THE EMPLOYEE WAS EITHER TREATED FOR, TESTED **OR DIAGNOSED WITH A CHRONIC RESPIRATORY DISORDER**. If the earliest dated document is prior to January 1, 1993, the pre-1993 CBD criteria may be used. **ONCE IT IS ESTABLISHED THAT THE EMPLOYEE HAD A CHRONIC RESPIRATORY DISORDER PRIOR TO 1993, THE CE IS NOT LIMITED TO USE OF MEDICAL REPORTS PRIOR TO 1993 TO MEET THE THREE OF FIVE CRITERIA.**"

*(Excerpt)*

DOCKET NUMBER: 57973-2005

Decision Date: January 7, 2005

#### NOTICE OF FINAL DECISION

This is the decision of the Final Adjudication Branch concerning your claim for compensation under Part B of the Energy Employees Occupational Illness Compensation Program Act of 2000, as amended, 42 U.S.C. § 7384 *et seq.* (EEOICPA or the Act). This decision affirms the recommended acceptance issued on November 30, 2004.

#### STATEMENT OF THE CASE

On May 28, 2004, you filed a claim for survivor benefits, as the widow of [**Employee**], Form EE-2, under Part B of the EEOICPA. You identified "breathing problems" and chronic beryllium disease (CBD) as the claimed conditions. You also filed a Form EE-3 indicating that your husband was employed by F.H. McGraw at the Paducah Gaseous Diffusion Plant in Paducah, Kentucky from 1951 to "I don't remember."

The Department of Energy (DOE) was unable to verify employment, however, they did confirm that F.H. McGraw held a number of contracts, during this time, at the Paducah Site. You submitted Social Security records indicating that your husband was employed by F.H. McGraw from the fourth quarter of 1951 to the third quarter of 1954. Social Security reported maximum reportable earnings (\$3600.00) for 1952, 1953 and 1954. The DOE also submitted a "Personnel Clearance Master Card" from F.H. McGraw and Company that indicated [**Employee**] was terminated on December 17, 1954 due to a reduction in force; this notice also indicated that a Q Clearance was granted on February 14, 1952.[1]

Based upon the DOE response that F.H. McGraw held a number of contracts from 1951 to 1954 and the security Q clearance notification, the district concluded that the DOE had a business or contractual arrangement with F.H. McGraw. The district office further concluded that your husband worked with F.H. McGraw at the Paducah Gaseous Diffusion Plant for at least one day on December 17, 1954 based upon the reduction in force notice.[2]

The death certificate submitted showed that [Employee] died on October 12, 1999, and the immediate cause of death as congestive heart disease. The death certificate indicated that the surviving spouse was [Claimant]. You submitted a marriage certificate showing that [Employee] and [Claimant] were married on March 23, 1940.

You submitted a medical report dated February 23, 1991, from Lowell F. Roberts, M.D., which indicates a history of chronic obstructive pulmonary disease (COPD), shortness of breath, and dyspnea. A February 23, 1991 X-ray report, from D.R. Hatfield, M.D., indicates a diagnosis of COPD. A February 25, 1991 CT-scan, from Barry F. Riggs, M.D., indicates abnormal nodular densities of the right lower lobe and a diagnosis of COPD. A February 26, 1991 medical report from M.Y. Jarfar, M.D. indicated that pulmonary function tests showed mild obstructive defects and mild diffusing lung capacity defects. You also submitted an X-ray report dated September 6, 1994, from Robert A. Garneau, M.D., that indicated diagnoses of COPD and Interstitial Fibrosis. A November 27, 1994 medical report from David Saxon, M.D., indicated findings of rales and wheezing. A December 2, 1994 medical report from Dr. Saxon, indicates hypoxemia to the left lower lung. A December 2, 1994 medical report from Lowell F. Roberts, M.D., indicated diagnoses of shortness of breath, congestive heart failure, dyspnea and cough, and rales in the lung base. An August 13, 1995 X-ray report from Charles Bea, M.D., indicates a diagnoses of bibasilar infiltrates. A December 30, 1996 X-ray report from Sharron Butler, M.D., indicates an increase of lung markings since the September 14, 1992 study. In the March 1, 1998 X-ray report from Dr. Butler diagnoses of "advanced chronic lung changes, mild interstitial prominence diffusely, and patch density of the posterior right lung" are indicated. An August 19, 1998 CT-scan from James D. Van Hoose, indicates diagnoses of pleural thickening and pulmonary calcifications. An August 6, 1999 pulmonary function test from William Culberson, M.D. indicates a diagnosis of moderately severe restrictive disease. An October 12, 1999 discharge summary from Eric B. Scowden, M.D. indicates diagnoses of progressive shortness of breath, congestive heart disease, COPD, and history of right-sided empyema complicating pneumonia necessitating prolonged chest tube drainage with a continued open sinus tract." Based upon these reports the district office concluded that you had CBD prior to January 1, 1993.[3]

On November 30, 2004, the district office issued a recommended decision concluding that your husband was a covered beryllium employee, that he was exposed to beryllium, and that he had symptoms and a clinical history similar to CBD prior to January 1, 1993. They further concluded that you are entitled to compensation in the amount of \$150,000 pursuant to § 7384s of the EEOICPA.

Section 30.316(a) of the EEOICPA implementing regulations provides that, "if the claimant does not file a written statement that objects to the recommended decision and/or requests a hearing within the period of time allotted in 20 C.F.R. § 30.310, or if the claimant waives any objection to all or part of the recommended decision, the Final Adjudication Branch (FAB) will issue a decision accepting the recommendation of the district office, either whole or in part." 20 C.F.R. § 30.316(a). On December 1, 2004, the FAB received your signed waiver of any and all objections to the recommended decision. After considering the evidence of record, your waiver of objection, and the NIOSH report, the FAB hereby makes the following:

#### **FINDINGS OF FACT**

1. You filed a claim for benefits under Part B of the EEOICPA on May 28, 2004.

**2. Your husband was employed at the Paducah Gaseous Diffusion Plant for at least one day on December 17, 1954( EMPHASIS ADDED).**

3. Medical evidence has been submitted establishing a diagnosis of chronic beryllium disease before January 1, 1993.

4. You were married to the employee from March 23, 1940, until his death on October 12, 1999.

Based on these facts, the undersigned makes the following:

**CONCLUSIONS OF LAW**

Section 7384s of the Act provides for the payment of benefits to a covered employee, or his survivor, with an "occupational illness," which is defined in § 7384l(15) of the EEOICPA as "a covered beryllium illness, cancer. . .or chronic silicosis, as the case may be." 42 U.S.C. §§ 7384l(15) and 7384s. 42 U.S.C. § 7384l.

Pursuant to § 7384l(13)(B) of the EEOICPA, to establish a diagnosis of CBD before January 1, 1993, the employee must have had "an occupational or environmental history, or epidemiologic evidence of beryllium exposure; and (iii) any three of the following criteria: (I) Characteristic chest radiographic (or computed tomography (CT)) abnormalities. (II) Restrictive or obstructive lung physiology testing or diffusing lung capacity defect. (III) Lung pathology consistent with chronic beryllium disease. (IV) Clinical course consistent with a chronic respiratory disorder. (V) Immunologic tests showing beryllium sensitivity (skin patch test or beryllium blood test preferred)." 42 U.S.C. § 7384l(13)(B).

**The evidence of record establishes that the employee was a covered beryllium employee who had at least three of the five necessary medical criteria to establish pre-1993 CBD under the EEOICPA. Therefore, you have provided sufficient evidence to establish that your husband was diagnosed with pre-1993 CBD, pursuant to § 7384l(13)(B) of the EEOICPA. (EMPHASIS ADDED)**

The undersigned has reviewed the facts and the district office's November 30, 2004 recommended decision and finds that you are entitled to \$150,000 in compensation.

The decision on the claim that you filed under Part E of the EEOICPA is being deferred until issuance of the Interim Final Regulations.

Washington, DC

Tom Daugherty  
Hearing Representative  
Final Adjudication Branch

[1] The Paducah Gaseous Diffusion Plant was a DOE facility from 1952 to July 28, 1998 and July 29, 1998 to present (remediation) where radioactive and beryllium material were present, according to the Department of Energy Office of Worker Advocacy Facility List (<http://www.hss.energy.gov/HealthSafety/FWSP/Advocacy/faclist/findfacility.cfm>).

[2] Per Chapter 2-100.3h (January 2002) of the Federal (EEOICPA) Procedure Manual, "The OWCP may receive evidence from other sources such as other state and federal agencies" to support a claim under the EEOICPA.

[3] Per Chapter 2-700.4 (September 2004) of the Federal (EEOICPA) Procedure Manual, “To determine whether to use the Pre or Post 1993 CBD criteria, the medical evidence must demonstrate that the employee was either treated for, tested or diagnosed with a chronic respiratory disorder.(EMPHASIS ADDED) If the earliest dated document is prior to January 1, 1993, the pre-1993 CBD criteria may be used. Once it is established that the employee had a chronic respiratory disorder prior to 1993, the CE is not limited to use of medical reports prior to 1993 to meet the three of five criteria.”(EMPHASIS ADDED)

### Robert W. Jeffords’ Diagnosis of Chronic Obstructive Pulmonary Disease On October 16, 1979 Is Considered A Lung Abnormality Meeting the Pre-1993 CBD Criteria

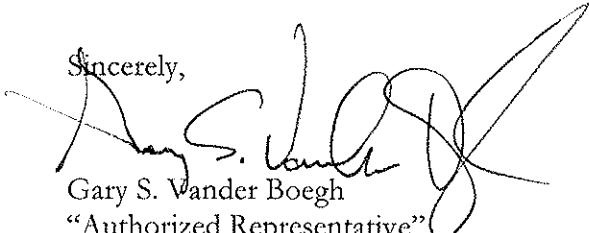
Per Chapter 2-700.4 (September 2004) of the Federal (EEOICPA) Procedure Manual, Claimant Attachment (CA-001) page 1 of 4, and based on the pre-1993 criteria, once it is established that the employee had a CHRONIC RESPIRATORY DISORDER PRIOR TO 1993, the CE IS NOT limited to use of medical reports prior to 1993 to meet the three of five criteria. Therefore, Mr. Jeffords was diagnosed before January 1, 1993 with a lung abnormality and meets criteria (I) CHARACTERISTIC CHEST RADIOGRAPHIC (OR COMPUTED TOMOGRAPHY (CT)) ABNORMALITIES.

### Request for Approval of Part B and Part E Compensation for Chronic Beryllium Disease (CBD)

Based on the above medical evidence and the the claimant Evelyn Jeffords has met her burden of proof for establishing her claim for CBD under the EEOICPA Part B and is therefore entitled to compensation for Part B in the amount of \$150,000 and for Part E compensation based on the maximum “survivors” benefit in the amount of \$125,000.

Please feel free to contact me at 270-559-1752 or 270-450-0850.

Sincerely,



Gary S. Vander Boegh

“Authorized Representative”

Vice President- Commonwealth Environmental Services, LLC.

## U.S. DEPARTMENT OF LABOR

EMPLOYMENT STANDARDS ADMINISTRATION  
 OFFICE OF WORKERS' COMPENSATION PROGRAMS  
 DIVISION OF ENERGY EMPLOYEES OCCUPATIONAL  
 ILLNESS COMPENSATION  
 FINAL ADJUDICATION BRANCH



**EMPLOYEE:** Robert W. Jeffords  
**CLAIMANT:** Robert W. Jeffords  
**FILE NUMBER:** 336227145  
**DOCKET NUMBERS:** 60701-2005  
**DECISION DATE** July 11, 2005

**NOTICE OF FINAL DECISION**

This is a decision of the Final Adjudication Branch concerning your claim for compensation under the Energy Employees Occupational Illness Compensation Program Act. 42 U.S.C. § 7384 *et seq.* For the reasons set forth below, your claim is denied. A copy of this decision will be provided to your authorized representative.

**STATEMENT OF THE CASE**

On August 17, 2004, you filed a form EE-1, Claim for Benefits under the EEOICPA, for chronic obstructive pulmonary disease (COPD). The claim was based, in part, on the assertion that you were an employee of a Department of Energy (DOE) contractor.

On the form EE-3, Employment History, you stated you were employed as a security guard by F. H. McGraw at the gaseous diffusion plant (GDP) in Paducah, Kentucky for the period of January 1, 1952 to December 31, 1955. Based on the Itemized Statement of Earnings from the Social Security Administration and the Personnel Clearance Master Card from DOE, the district office stated you were employed from January 1, 1951 to June 30, 1955. However, since the Social Security Administration records showed a gap of employment in 1951 and since you did not claim employment at the Paducah gaseous diffusion plant, I find you were employed from January 1, 1952 to June 30, 1955.

You have filed a claim under section 7384 of the Act for COPD. 42 U.S.C. § 7384. Section 7384 of the Act states that the only covered occupational illnesses are cancer, beryllium illnesses, and chronic silicosis. 42 U.S.C. § 7384(15). Since the medical evidence you submitted did not establish that you were diagnosed with one of these occupational illnesses, the district office sent you a development letter dated August 27, 2004. That letter explained the needed information, requested additional medical evidence, and allowed time for response. No reply or additional medical information was received.

RECEIVED  
 Medical Resource Center

OCT 20 2004

CLAIMANT ATTACHMENT 001 transmitted to DOL-DO

PAGE NO. 1 OF 4

A person exposed to beryllium during the course of employment in specified facilities qualifies as a "covered beryllium employee," as defined in Part B of the Act. 42 U.S.C. § 7384l(7). Due to confirmation of your employment in a facility where beryllium was present, you are considered to be a "covered beryllium employee." However, in order to receive medical benefits and/or compensation, you must be diagnosed with a covered beryllium illness, in accordance with Part B of the Act and implementing regulations. 42 U.S.C. § 7384l(8), 20 C.F.R. § 30.205. "Covered beryllium illness" is defined in Part B of the Act as beryllium sensitivity as established by an abnormal beryllium lymphocyte proliferation test (LPT) performed on either blood or lung lavage cells *or* established chronic beryllium disease. 42 U.S.C. § 7384l(8).

Chronic beryllium disease is established by the following:

(A) For diagnoses on or after January 1, 1993, beryllium sensitivity (as established in accordance with paragraph (8)(A)), together with lung pathology consistent with chronic beryllium disease, including—

- (i) a lung biopsy showing granulomas or a lymphocytic process consistent with chronic beryllium disease;
- (ii) a computerized axial tomography scan showing changes consistent with chronic beryllium disease; or
- (iii) pulmonary function or exercise testing showing pulmonary deficits consistent with chronic beryllium disease.

(B) For diagnoses before January 1, 1993, the presence of—

- (i) occupational or environmental history, or epidemiologic evidence of beryllium exposure; and
- (iii) any three of the following criteria:
  - (I) Characteristic chest radiographic (or computed tomography (CT)) abnormalities.
  - (II) Restrictive or obstructive lung physiology testing or diffusing lung capacity defect.
  - (III) Lung pathology consistent with chronic beryllium disease.
  - (IV) Clinical course consistent with a chronic respiratory disorder.
  - (V) Immunologic tests showing beryllium sensitivity (skin patch test or beryllium blood test preferred). 42 U.S.C. § 7384l(13).

You were diagnosed with chronic obstructive pulmonary disease (COPD) on October 16, 1979.

Office procedures state that a diagnosis of COPD is sufficient to establish a clinical course consistent with a chronic respiratory disorder<sup>1</sup>. Therefore, the medical records have been reviewed with the pre-1993 criteria in mind.

District Medical Consultant, Dr. Robert E. Sandblom, stated in his December 6, 2004, that chest x-rays did not show abnormalities characteristic of CBD. Dr. Sandblom states that a 1998 pulmonary function report shows restriction, which meets criterion II. There is no lung pathology or immunologic tests. Since the medical evidence submitted only meets two of the five criteria, it is insufficient to establish a pre-1993 diagnosis of CBD.

<sup>1</sup> Federal (EEOICPA) Procedure Manual, Chapter 2-700.5f(2) (September 2004).



Since you have not submitted a beryllium lymphocyte proliferation test (BeLPT) you do not meet the criteria for a post-1993 diagnosis of CBD.

The EEOICPA implementing regulations are clear as to the burden of proof placed on every claimant under the Act. Submitting medical evidence in support of a claim is ultimately the claimant's responsibility, as explained in the implementing regulations. 20 C.F.R. § 30.111. This section states that ... "the claimant bears the burden of proving by a preponderance of the evidence the existence of each and every criterion necessary to establish eligibility under any compensable claim category...the claimant also bears the burden of providing to the 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."

Because the necessary elements to establish a diagnosis of a covered condition under the Act were not met, the Jacksonville district office issued a recommended denial on April 27, 2005. The decision found that the evidence was insufficient to establish that you have an occupational illness as defined in the Act and implementing regulations. 42 U.S.C. § 7384l(15), 20 C.F.R. § 30.5(z).

The recommended decision informed you that you had sixty days to file any objections, and that period ended on June 26, 2005. You have not filed an objection to the recommended decision. The implementing regulations provide that within 60 days from the date the recommended decision is issued, the claimant must state, in writing, whether he or she objects to any of the findings of fact and/or conclusions of law contained in such decision and whether a hearing is desired. 20 C.F.R. § 30.310(a). The implementing regulations further state that if the claimant does not file a written statement that objects to the recommended decision and/or requests a hearing with the period of time allotted in § 30.310, or if the claimant waives any objections to all or part of the recommended decision, the FAB will issue a decision accepting the recommendation of the district office, either in whole or in part. 20 C.F.R. § 30.316(a). In this case, you did not file an objection letter or a waiver of objections.

### FINDINGS OF FACT

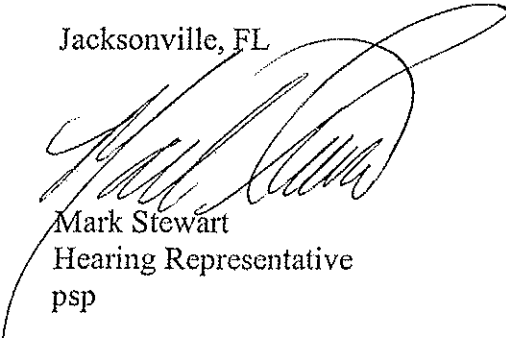
1. On August 17, 2004, you filed a form EE-1, Claim for Benefits under the EEOICPA for COPD. Part B of the Act states that the only covered occupational illnesses are cancer, beryllium illnesses, and chronic silicosis; therefore, COPD is a covered occupational illness. 42 U.S.C. § 7384l(15).
2. You were employed at the Paducah GDP from January 1, 1952 to December 31, 1955. Since beryllium was present at the Paducah GDP during the time of your employment, you are considered a "covered beryllium employee," as defined in Part B of the Act. 42 U.S.C. § 7384l(7). However, the medical evidence is insufficient to establish that you have a beryllium illness.
3. On April 27, 2005 the Jacksonville district office issued a recommended decision.
4. You did not file an objection letter or a waiver of objections.

CLAIMANT ATTACHMENT 001  
PAGE NO. 3 of 4

CONCLUSIONS OF LAW

Based on my review of the evidence of record and the recommended decision, I find that the recommended decision is correct and I accept those findings and the recommendation. The evidence in the record does not establish that you were diagnosed with a covered occupational illness under the Act and implementing regulations. 42 U.S.C. § 73841(15), 20 C.F.R. § 30.5(z). As explained in section 30.110(b) of the implementing regulations, "Any claim that does not meet all of the criteria for at least one of these categories as set forth in these regulations must be denied." 20 C.F.R. § 30.110(b). The undersigned hereby denies payment of compensation under the Act.

Jacksonville, FL



Mark Stewart  
Hearing Representative  
psp

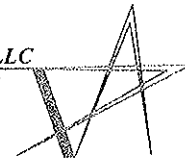
CLAIMANT ATTACHMENT 001  
PAGE NO. 4 OF 4

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"A Native American Woman Owned Company"



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Date: 9-20-10

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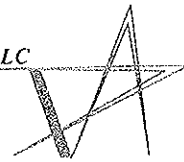
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\*\*\* FAX TX REPORT \*\*\*  
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