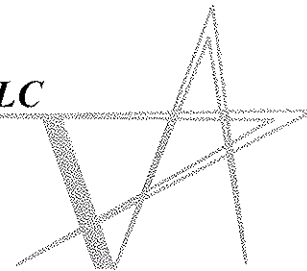


COMMONWEALTH ENVIRONMENTAL SERVICES, LLC

"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 21, 2010

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

Attention: Jim Bibeault & Madam Secretary Hilda Solis

Employee: Marty Shelton
File Number: XXX-XX-6308

Dear Mr. Bibeault and Mr. Spragg

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>). As "Authorized Representative" (AR) for employee/ claimant Marty Shelton, I hereby respectfully submit the attached "EE-1 form" and "Claimant Attachments (CA-001- CA-004)" that support Mr. Shelton's Part B and Part E claims for compensation and medical benefits for Chronic Beryllium Disease (CBD). Mr. Shelton's respiratory disease diagnosis prior to January 1, 1993, allows Mr. Shelton to have his Energy Employee Occupational Illness Compensation Program (EEOICP) CBD claim evaluated based on statutory requirements 42 USC § 7384l (13) (B) 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 Department of Labor has further stated, "**For beryllium disease prior to January 1, 1993, a specific diagnosis of CBD IS NOT REQUIRED (emphasis added.)**"....

EEOICPA Procedures and Prior Case Reference Supporting Marty Shelton CBD Claim for Compensation and Medical Benefits

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. (emphasis added)...**

...."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 (emphasis added)** based upon the reduction in force notice.[2]...."

....."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(emphasis added).** 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). (emphasis added)

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.

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)

Marty Shelton’s Medical Reports, Pulmonary Function Test (PFT) Established Lung Disease and Chronic Obstructive Pulmonary Disease (COPD) Reflecting Compliance With Pre-1993 CBD Criteria

Marty Shelton provides Claimant Attachment (CA) – 001 that consists of his medical documentation “Review of the SOAF”; CA-002 medical exam dated 10/16/09; and CA-003, “Notice of Final Decision” dated March 11, 2010; and CA-004, “Memorandum from DEEOICP Director Peter Turic” dated 8/25/05 that support his claim for CBD as follows:

1/ CA-001, “Review of the SOAF”, Mr. Shelton was diagnosed on 1/29/90 by the “Respiratory Disease Clinic” in Paducah, Kentucky with “moderate lung disease. His clinical assessment was asthma and rhinitis. He was treated with Theo-Dur and Proventil inhaler.....,” ...” A letter sent to Mr. Shelton on 01/14/08 detailed the results of an exam that was designated to determine if there were health effects from the exposures that occurred at the DOE facility. This letter indicates that **MR. SHELTON HAD COMPLAINED OF CHRONIC COUGH, DIFFICULTY BREATHING AT TIMES, ALLERGIES, WHEEZING, AND PHLEGM....**” (emphasis added). The pulmonary function tests in 1990 an FVC of 4.24 or 88% of predicted, an FEV1 of 2.91 or 70% of predicted and a ratio of FEV1/FEV of 69. This noted to be moderate lung disease.

Therefore, the claims examiner **IS NOT** to limited the pre- 1993 medical reports criteria.

Conclusion: Compliance pursuit with § 7384L(13)(B) , Criteria’s I, II, & IV.

2/ CA-002, medical report provided by Dr William H. Culbertson dated 10/16/09, describing “Severe obstructive defect.”

Conclusion: Compliance pursuit with § 7384L(13)(B), Criteria I.

3/ CA-003, “Notice of Final Decision” dated March 11, 2010.“ You submitted medical evidence which established that you were diagnosed with asthma and COPD...” ...“The district office searched source documents used to compile the U.S. Department of Labor Site Exposure

Matrices (SEM), and it identified asthma and COPD as potential health effects from occupational toxic substance exposure...”

Conclusion: Compliance pursuit with § 7384L(13)(B), Criteria’s I & II.

4/ CA-004, “Memorandum from DEEOICP Director Peter Turic” dated 8/25/05 regarding causal relationship between respiratory disorders and CBD.

Conclusion: Compliance pursuit with § 7384L(13)(B), Criteria’s I, II.

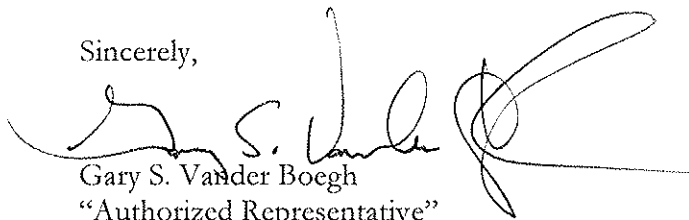
Request for Approval of Part B and Part E Compensation and Medical Benefits for Chronic Beryllium Disease (CBD)

Based on the above medical evidence, Marty Shelton has met his statutory and regulatory burden of proof for his EEOICPA Part B CBD claim for compensation in the amount of \$150,000 and EEOICPA Part E compensation based on the established maximum whole body impairment up to 100% in the amount of \$250,000.

More importantly, Marty Shelton is also entitled to medical benefits for his diagnosed illness of Chronic Beryllium Disease, that includes all consequential illnesses (COPD) that are causally related to his CBD.

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.

**Claim for Benefits Under the Energy Employees
Occupational Illness Compensation Program Act**

U.S. Department of Labor
Employment Standards Administration
Office of Workers' Compensation Programs



Note: Provide all information requested below. Do not write in the shaded areas. OMB Number: 1215-0197
Expiration Date: 08/31/2010

Employee Information (Please Print Clearly)

1. Name (Last, First, Middle Initial) Shelton Marty J		2. Social Security Number [REDACTED]	
3. Date of Birth [REDACTED] Month Day Year	4. Sex <input checked="" type="checkbox"/> Male <input type="checkbox"/> Female	5. Dependents <input type="checkbox"/> Spouse <input type="checkbox"/> Children <input type="checkbox"/> Other:	
6. Address (Street, Apt. #, P.O. Box) [REDACTED] (City, State, ZIP Code) [REDACTED]		7. Telephone Number(s) a. Home: [REDACTED] b. Other: () -	

8. Identify the Diagnosed Condition(s) Being Claimed as Work-Related (check box and list specific diagnosis)

	9. Date of Diagnosis		
	Month	Day	Year
<input type="checkbox"/> Cancer (List Specific Diagnosis Below)			
a.			
b.			
c.			
<input type="checkbox"/> Beryllium Sensitivity			
<input checked="" type="checkbox"/> Chronic Beryllium Disease (CBD)	01	29	1990
<input type="checkbox"/> Chronic Silicosis			
<input type="checkbox"/> Other Work-Related Condition(s) due to exposure to toxic substances or radiation (List Specific Diagnosis Below)			
a.			
b.			
c.			

Awards and Other Information

10. Did you work at a location designated as a Special Exposure Cohort (SEC)?	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
11. Have you filed a lawsuit seeking either money or medical coverage for the above claimed condition(s)?	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
12. Have you filed any workers' compensation claims in connection with the above claimed condition(s)?	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
13. Have you or another person received a settlement or other award in connection with a lawsuit or workers' compensation claim for the above claimed condition(s)?	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
14. Have you either pled guilty or been convicted of any charges connected with an application for or receipt of federal or state workers' compensation?	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
15. Have you applied for an award under Section 5 of the Radiation Exposure Compensation Act (RECA)?	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
If yes, provide RECA Claim #: [REDACTED]	
16. Have you applied for an award under Section 4 of the Radiation Exposure Compensation Act (RECA)?	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO

Employee Declaration

Any person who knowingly makes any false statement, misrepresentation, concealment of fact, or any other act of fraud to obtain compensation as provided under EEOICPA or who knowingly accepts compensation to which that person is not entitled is subject to civil or administrative remedies as well as felony criminal prosecution and may, under appropriate criminal provisions, be punished by a fine or imprisonment or both. Any change to the information provided on this form once it is submitted must be reported immediately to the district office responsible for the administration of the claim. I hereby make a claim for benefits under EEOICPA and affirm that the information I have provided on this form is true. If applicable, I authorize the Department of Justice to release any requested information, including information related to my RECA claim, to the U.S. Department of Labor, Office of Workers' Compensation Programs (DWCP). Furthermore, I authorize any physician or hospital (or any other person, institution, corporation, or government agency, including the Social Security Administration) to furnish any desired information to the U.S. Department of Labor, Office of Workers' Compensation Programs.

Jay S. [Signature] *Marty Shelton*
Employee Signature Date: 09/21/2010

Resource Center Date Stamp

[REDACTED]

Joan M. Watkins, D.O., MPH, CIME, FACOEM, FACPM
University of South Florida
Occupational Medicine Residency Program
13201 Bruce B. Downs Blvd. MDC56
Tampa, FL 33612

FL License No: OS3971

Medical Confidential

March 5, 2010

Latricia Alston
Claims Examiner

Dear Ms. Alston:

This report is in response to your questions regarding the MMI status and the whole person impairment rating of Marty J. Shelton for his accepted conditions of COPD and asthma.

Case Identification/SOAF:

Claimant: SHELTON, MARTY J.
File #: 
DOB: 

REVIEW OF THE SOAF: The patient is 5'11" and weighs approximately 180 pounds.

Review of the ADL Questionnaire regarding Mr. Shelton's accepted conditions of asthma and COPD filled out by Barbara K. Dillard, A.R.N.P., on 11/11/09 indicates that the patient is independent in all activities except that he requires assistance in lifting, pulling and pushing. He also requires assistance in driving and has difficulty with sleep due to pain.

Mr. Shelton was evaluated in Respiratory Disease Clinic, Paducah, Kentucky on 01/29/1990. At that time his complaint was wheezing. His PFT's showed an FVC of 4.24 or 88% of predicted, an FEV1 of 2.91 or 70% of predicted and a ratio of FEV1/FVC of 69. This was interpreted as moderate lung disease. His clinical assessment was asthma and rhinitis. He was treated with Theo-Dur and Proventil inhaler.

A letter sent to Mr. Shelton on 01/14/08 detailed the results of an exam that was designed to determine if there were health effects from the exposures that occurred at a DOE facility. This letter indicated that Mr. Shelton had complained of chronic cough, difficulty breathing at times, allergies, wheezing and phlegm. The letter indicated that

CLAIMANT ATTACHMENT 001

PAGE NO. 1 of 2

Dr. Love 415-3830
 Finny 441-0021

PP: 441-4390

1 TWICE daily	Lipitor 50mg		34041788	\$170.2
1 every 12 hours	Diltiazem 40mg		32027593	\$435.
1 Four Times daily	Pericort 10/225 mg		32027961	\$206.7
3 to 4 each meal and at bedtime	Dyinger B-D Short Act UF		36189578	\$24.41
1 at bedtime	Pancrealz 25 mg		36195544	\$893.5
1 at bedtime	Singulair 10mg	X	36192615	\$140.49
1 three times daily	Elavil 10 mg		36191921	NR \$8
1 or 2 at bedtime	Elavil 50 mg		36191922	NR \$16
only as needed	Proventil 6.7GM	X	36194052	\$410.49
to each meal 2 hrs	patches Lidoderm 5%		36191923	\$1052.13
apply 3 times daily on feeding tube	Musivacim Ointment 2%		36191421	\$45.49
apply 4 times daily	Voltaren Gel 1% Sol		36195961	\$63.79
apply twice daily for pain	Elidel cream 1%		36194053	\$95.49
1 puff every 12 hrs	Advair 250/50	X	36194051	\$234.4
1 each daily	Dairiva 18mg CG	X	36194050	\$197.01
1 every 6 hrs as needed	Phenirgan 25 mg		36194367	\$56.99
1 daily	Netivim		36196313	\$167.4
6 times daily 1 tablet once of headache	Centour-Microfill		36188248	\$213.16
4 times daily	Madalt 10mg		36192525	\$373.50
1 daily	Alcohol Swabs		36189579	\$1.99
1 at bedtime	Laxid (water)		36186655	\$10
as needed	Deroguel 10mg		36189580	\$160.99
5 times at night	Novolin R		36187002	\$119.04
3 times daily	Lantus		36187000	\$275.99
in morning	Potassium LB Meacosa		36196131	\$92.50
3 times daily	Lasnapril 10mg		36200008	\$4.00
1 spray in one nostril once	Salipentil 10mg		36199725	\$30.18
one spray in one nostril once	236 M Area 40 Vision		36200382	\$9.50
30 tabs	Mascobal 500mc 1/5		36200384	\$327.75
30 tabs	Betal/P/P 50/50		36200810	\$265.00
10 puffs daily	Salipentil 300mg		36201081	\$139.00
twice a day	Bupropion 5mg tabs		36201080	\$58.50
1 tablet at bedtime	Ropinirole 0.5 mg HC		36202083	\$88.50

CLAIMANT ATTACHMENT

PAGE NO. 2



LOURDES

1530 Lone Oak Road • Paducah, KY 42003
A Member of Catholic Healthcare Partners

PATIENT: SHELTON, MARTY J
ATTENDING: PATRICK C FINNEY, MD
MR#: 044756
LOCATION: CLINICAL ROOM:
DOB: [REDACTED]
DS: [REDACTED]

PULMONARY FUNCTION

PULMONOLOGIST: William H. Culbertson, MD

DATE OF EXAM: 10/16/2009

INTERPRETATION

1. Severe obstructive defect, significant improvement post bronchodilator. There was a 47% improvement in the FEV1 post bronchodilator.
2. There is severe reduction of ventilatory capacity due to obstruction.
3. Mild air trapping. Residual volume was 100%.
4. Normal diffusion capacity.
5. The PO2 is slightly decreased for age. There is mild hypercapnia with a normal pH.

William H. Culbertson, MD

whc/rld D: 10/20/2009 10:39:41 T: 10/21/2009 06:19:32
Voice Record ID: 8070
Last Modified on 10/21/2009 06:19:32 by rld

*Needs
pulm
consultation
if he doesn't
already
see
please*

CLAIMANT ATTACHMENT 002
PAGE NO. 1051



EMPLOYEE: Marty J. Shelton
CLAIMANT: Marty J. Shelton
FILE NUMBER: XXX-XX-6308
DOCKET NUMBER: 10075936-2009
DECISION DATE: March 11, 2010

NOTICE OF FINAL DECISION FOLLOWING A HEARING

This is a decision of the Final Adjudication Branch (FAB) concerning your claim for compensation under the Energy Employees Occupational Illness Compensation Program Act of 2000, as amended, 42 U.S.C. § 7384 *et seq.* (EEOICPA or the Act). For the reasons stated below, your claim under Part E of the Act for hearing loss is denied. The adjudication of your other claimed conditions under Part E is deferred at this time.

STATEMENT OF THE CASE

On June 16, 2008, you filed a claim for benefits under Part E of the EEOICPA, Form EE-1, identifying hearing loss and asthma as the medical conditions being claimed. On April 27, 2009, you filed an additional EE-1 for chronic obstructive pulmonary disease (COPD). On May 14, 2009, you file an EE-1 for pseudocyst.

On Form EE-3 (Employment History), you indicated you were employed as an iron worker, truck driver, welder and pipefitter at the Paducah Gaseous Diffusion Plant (PGDP)¹, a Department of Energy (DOE) facility.

You submitted medical evidence which established that you were diagnosed with asthma and COPD. You also submitted medical evidence which included a December 3, 2007 hearing evaluation letter which stated that your October 12, 2007 hearing test indicated that you had a severe loss in hearing.

The district office searched source documents used to compile the U.S. Department of Labor Site Exposure Matrices (SEM), and it identified asthma and COPD as potential health effects from occupational toxic substance exposure; however, the SEM did not identify hearing loss as a potential health effect.

¹ According to a March 11, 2010 search of the U.S. Department of Energy (DOE) website at <http://www.hss.energy.gov/HealthSafety/FWSP/Advocacy/faclist/showfacility.cfm>, the Paducah Gaseous Diffusion Plant (PGDP) in Paducah, Kentucky is a covered DOE facility from 1951 to the present.

CLAIMANT ATTACHMENT 003

PAGE NO. 1 OF 2

The doctor determined that the employee's combining value for COPD of 5% and the value of asthma of 0%, using the combined values chart, page 604, gives a whole body impairment rating of 5%. The DMC notes that the Fifth Edition AMA Guides were used.

The calculation of an award is tabulated by a multiplication of the percentage points of whole-person impairment (as designated by the rating physician) by \$2,500 for each percentage point. In this case, a 5% impairment rating results in compensation of \$12,500.

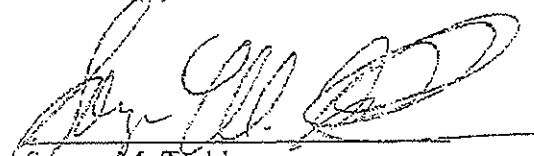
On March 11, 2010, the Co-Located Unit sent the employee and his authorized representative a state workers' compensation (SWC) or tort lawsuit letter to see if the he received any compensation for asthma and COPD or pled guilty or been convicted of any charges in connection with an application for or receipt of federal or state workers' compensation since the EEOICPA final decision issued on August 17, 2009. The employee was asked to provide the written responses to the questions within 30 days of receiving the letter.

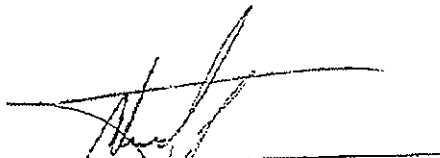
FINDINGS OF FACT

1. The employee filed a claim for benefits under Part E of the Act.
2. A final decision was issued under Part E of the Act finding that the employee was a DOE contractor employee who was entitled to medical benefits for asthma and COPD.
3. The rating physician concludes that the employee's covered illnesses have reached maximum medical improvement (MMI).
4. Utilizing the AMA Guides, it was determined the employee has a whole person impairment rating of 5% based on the covered illnesses of COPD and asthma.

CONCLUSIONS OF LAW

In accordance with the American Medical Association's Guides to the Evaluation of Permanent Impairment, it has been determined the employee has a whole person impairment rating of 5% based on the organs or systems affected by the covered illnesses of asthma and chronic obstructive pulmonary disease (COPD). The employee is entitled to \$2,500 for each percentage point. Therefore, the employee is entitled to compensation for impairment in the amount of \$12,500 in accordance with the Act 42 U.S.C. §§ 7385s-2(a)(1)(A), 7385s-2(a)(1)(B), and 7385s-2(b).


Sonya M. Todd
Claims Examiner



Manuel Mejia-Rodriguez
Supervisory Claims Examiner

Judy Vander Boegh

From: "Saved by Windows Internet Explorer 7"
Sent: Wednesday, November 25, 2009 8:02 AM
Subject: Chapter 2-1000 Exhibit 1

Memorandum from DEEOIC Medical Director
Regarding Causal Relationship Between
Established CBD and Other Respiratory Disorders

Memorandum

Date: 08/25/2005
To: Peter Turcic, Director of DEEOIC, Department of Labor
From: Sylvie I. Cohen, MD, MPH 
RE: Chronic Pulmonary Diseases

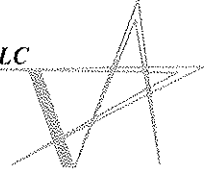
This memo is to address the rationale between the accepted medical condition under part B of the program for Chronic Beryllium Disease (CBD) and its contribution and aggravation of other chronic pulmonary diseases.

CBD is considered to be a disease that is involved with the destruction of viable pulmonary tissue that normally aides an individual in the process of gas exchange and blood oxygenation.

There are other chronic pulmonary diseases that are involved with lung tissue destruction or replacement that for the purpose of this memo we shall call "Other Chronic Pulmonary Diseases." Diseases that should be considered as members of this set are: asbestosis, silicosis, Chronic Obstructive Pulmonary Disease (COPD), emphysema, and pulmonary fibrosis.

Since both CBD and Other Chronic Pulmonary Diseases share in the destruction and or replacement of viable lung tissue, it can be concluded that the presence of CBD contributed or aggravated one of the illnesses named in the list of Other Chronic Pulmonary Diseases which led to an individual's death.

CLAIMANT ATTACHMENT 00f
PAGE NO. 001



Fax Cover Sheet

To: Jonathan *SPRAGG* & Bibeault
From: Gary S. Vander Boegh

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(202) 513-6401
Date: 9-21-10

Phone: (270) 450-0850
Pages: ___ Pages including the Cover Sheet

Re: Marty Shelton
CC: Attention Jim Bibeault & Jonathan Spragg

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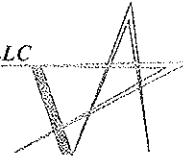
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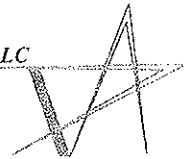
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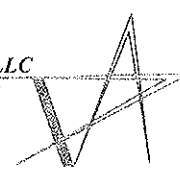
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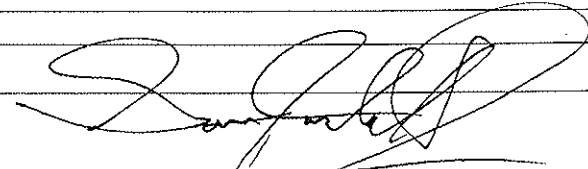
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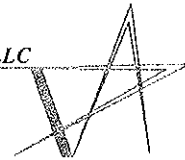
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