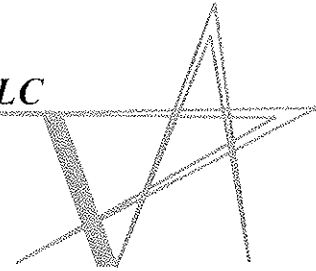


CES 100

COMMONWEALTH ENVIRONMENTAL SERVICES, LLC

"A Native American - Woman Owned Company"



Fax Cover Sheet

To: Department of Labor
Rachel Leiton
Mark Stewart
Greg Knapp
James Bibeault
James Johnson

From: Gary S. Vander Boegh

Fax: 202-693-1465
904-357-4785

Date: 06/13/12

Phone:

Pages: ____ Pages including the Cover Sheet

Re: Minnie Donald
xxx-xx-7985

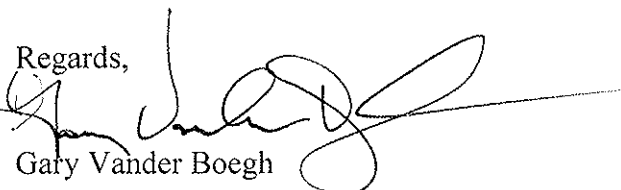
CC:

Urgent For Review Please Comment Please Reply Please Recycle

Comments:

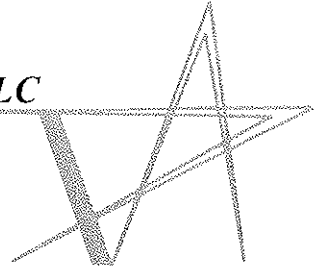
If you have any questions, please feel free to contact me at 270-450-0850 or 270-559-1752.

Regards,


Gary Vander Boegh

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

June 13, 2012

U. S. Department of Labor, DEEOIC
400 West Bay Street, Suite 722
Jacksonville, FL 32202
Facsimile: (904) 357-4785

U.S. Department of Labor, DEEOIC
200 Constitution Ave, NW, Room C3321
Washington, DC 20210
Facsimile: (202) 693-1465

Attention: Ms. Rachel Leiton, Mr. Mark Stewart, Mr. Greg Knapp, Mr. James Bibeault,
and James Johnson

File Number: xxx-xx-7985
Claimant/Employee: Minnie Donald

Re: Request for Review of Arbitrary and Capricious Denial of Reconsideration and
Reinstatement of Claims for CBD, Peripheral Neuropathy, and Lost Wages per the
Reopening Process

Ms. Leiton, Mr. Stewart, Mr. Knapp, Mr. Bibeault and Mr. Johnson,

In response to Mr. Birkheimer's request for additional information dated September 01,
2011 regarding Ms. Minnie Donald's claim, I provided claims documentation in support
of her claims for CBD, Peripheral Neuropathy that were not considered or evaluated by
the "Final Adjudication Branch" (FAB) based on their merits. The evidence is as
follows:

- On December 15, 2009, the Paducah Resource Center/ Paragon received evidence
in support of Ms. Donald's claim for "Lost Wages." Paragon employees were
made fully aware of the content of the letter that clearly confirmed Ms. Donald
was "severely" impaired due to fibromyalgia a covered illness caused by exposure
to toxic chemicals at the Paducah Gaseous Diffusion Plant. (PGDP).

The claimant has the following impairments which are considered
to be "severe" under the Social Security Act and Regulations:
chondromalacia of both patella, osteoarthritis and fibromyalgia.
These impairments prevent the claimant from meeting the physical
demands of work which exists in significant numbers in the
national economy.


- On February 16, 2012, FAB Director Mark Stewart issued a final decision after the FAB hearing that denied Ms. Donald's claim for CBD due to the "failure to comply with the required medical requirements to establish a diagnosis of CBD", (reference EEOICPA Procedure Manual, Chapter 2-1000.9.(b) (October 2009). However, FAB Director Stewart was fully aware, as was the DOL EEOICPA contractor Paragon, that Ms. Donald's claim for CBD was not required to "meet a diagnosis of CBD" since it was a statutory determination whether Ms. Donald's claim met the CBD pre-1993 statutory decision not a medical decision. (Note April 24, 2003 decision below:

Claimant Response

The claims examiner, DMC and FAB hearing representative have failed to acknowledge Ms. Donald's compliance with the statutory requirements and the prior established case precedents as follows:

U.S. DEPARTMENT OF LABOR

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



DOCKET NUMBER: 20099-2002
DECISION DATE: April 24, 2003

FINAL DECISION

This is the decision of the Final Adjudication Branch concerning your claim for compensation under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA). The district office recommended denial of the claimed condition of diabetes. This aspect of the claim was affirmed. However, the medical evidence was sufficient to accept the case based on pre-1993 criteria for chronic beryllium disease.

interstitial markings and interstitial fibrosis. In his report of December 16, 2002, Dr. Newman stated the finding of increased interstitial markings was consistent with CBD. Dr. Newman also stated that the pulmonary function testing described in the discharge summary showed moderate to severe obstructive and restrictive lung physiology, which is also consistent with CBD. Lastly, it is clear that [employee] had a clinical course consistent with a chronic respiratory disorder.

It is important to note that the determination as to whether the evidence meets the criteria for CBD is a statutory one rather than a medical one. Therefore, the case is acceptable even though Dr. Newman's interpretation of the medical evidence led him to believe that [employee] most likely experienced a connective tissue disorder rather than CBD. Since the medical evidence meets three of the above five statutory criteria, it is sufficient to establish a claim on the basis of CBD.

Therefore, I find that [employee] is a covered beryllium employee, as that term is defined in section 7384i(7) of the Act; and that [employee]'s chronic beryllium disease is a covered condition under section 7384i(13) of the Act and section 30.207 of the implementing regulations. 42 U.S.C. §§ 7384i(7), 7384i(13), 20 C.F.R. § 30.207. I find that you, as an eligible survivor of [employee] as defined by section 7384(e)(1)(A) of the EEOICPA, are entitled to compensation in the amount of \$150,000 pursuant to section 7384s(a) on the basis of [employee]'s chronic beryllium disease. 42 U.S.C. §§ 7384s(e)(1)(A), 7384s(a).

Prior DOL Director's COPD and CBD Case Precedents Were Not Applied Consistently With Other Similar Claims

DOL claims examiners have failed to consider prior case decisions when determining eligibility . The attached Bibeault and Nolan decisions noted below, reflect diagnosis of COPD, leading to an award of Part B compensations in the amount of \$150,000 for each case. Therefore, due to the established case law precedence, EEOICPA Director Ms. Rachel Leiton may reverse the prior denials of reconsideration and remand the claim for redevelopment due to compliance with the ACT.

DOCKET NUMBER: 19516-2004

DECISION DATE: October 15, 2004

I find that you are a covered beryllium employee as defined in the Act and that your chronic beryllium disease is a covered condition under the Act and the implementing regulations. 42 U.S.C. §§ 7384l(7), 7384l(13).

I find that the recommended decision is in accordance with the facts and the law in this case, and that you are entitled to \$150,000 and medical benefits effective January 15, 2002, for chronic beryllium disease pursuant to §§ 7384s(a) and 7384t of the EEOICPA. 42 U.S.C. §§ 7384s(a), 7384t.

Your claimed condition of chronic obstructive pulmonary disease is remanded to the district office for a determination on your eligibility for benefits for this condition. After obtaining the appropriate information and reviewing the facts in accordance with the EEOICPA and the implementing regulations, the district office should issue a new decision in accordance with office procedure.[2]

Jacksonville, FL

James Bibeault
Hearing Representative

FILE NUMBER: [Number Deleted]

DOCKET NUMBERS: 56382-2004
56845-2004
56847-2004
56955-2004

DECISION DATE: November 18, 2004

2. The medical evidence is sufficient to establish that the employee had chronic beryllium disease pursuant to the Act. 42 U.S.C. § 7384l(13).

<http://www.dol.gov/owcp/energy/regs/compliance/Decisions/GenericDecisions/Decisions...> 6/28/2011

CONCLUSIONS OF LAW

I have reviewed the record on this claim and the recommended decision issued by the district office on October 15, 2004. I find that the employee is a covered beryllium employee, as that term is defined in the Act; and that the employee's chronic beryllium disease is a covered condition under the Act and implementing regulations. 42 U.S.C. §§ 7384i(7), 7384i(13); 20 C.F.R. § 30.207.

I find that the recommended decision is in accordance with the facts and the law in this case, and that you, as eligible survivors of the employee as defined by the Act, are each entitled to one fourth of the maximum \$150,000 award, in the amount of \$37,500 each, pursuant to the Act on the basis of the employee's chronic beryllium disease. 42 U.S.C. §§ 7384s(c)(1)(B), 7384s(a).

Jacksonville, FL

J. Mark Nolan
Hearing Representative

[1] This is the second decision by the Final Adjudication Branch. On September 17, 2004, the case was remanded to the Jacksonville district office for additional development to establish that all claimants were eligible survivors.

Peripheral Neuropathy Medical Documentation

Although Ms. Donald has provided convincing evidence of her exposures to toxic chemicals that caused her diagnosed illnesses of CBD, fibromyalgia, and peripheral neuropathy, Ms. Donald's physician was more than supportive when providing the additional medical documentation that links her exposures to toxic chemicals at the PGDP. Since the DOL claims examiners have previously awarded compensation and medical benefits to CES claimant Don C. Vander Boegh, among others, for their exposures to TCE, TCA, carbon tetrachloride, among other hydro carbons that cause neurological damage, Niranjana Siva, MD's letter dated June 12, 2012 should be considered as establishing Ms. Donald's Part E "burden of proof." Dr. Siva is "board certified in Neurology."

Undisputed Findings of Fact (Proof of Failure to Review Existing Evidence)

- The EEOICPA Director failed to consider evidence presented the FAB hearing with regard to Claimant Attachment (CA) CA -001 dated November 23, 2010.

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.)"...

Evidence Of Minnie Donald Diagnosed "Lung Abnormality" in 1992 (Before January 1, 1993)

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/facilst/findfacility.cfm>). 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 Chronic Bronchitis. 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."

Minnie Donald provides the following Claimant Attachments that consist of her treatment for acute and chronic Bronchitis (COPD):

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

- The EEOICPA Director failed to consider evidence presented the FAB hearing with regard to Claimant Attachment (CA) CA -002 Pulmonary Function Test results
2/ CA-002 -- Pulmonary Function Test Results indicating, "Severe restrictive ventilator defect. This is indicated by the findings of a severely reduced forced vital capacity."

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

Yaser Jaafar, M.D.
William H. Culbertson, M.D.
Jeffrey S. Clarke, M.D.

HISTORY AND PHYSICAL
MINNIE DONALD
SEPTEMBER 24, 1992

26517

HISTORY: This is a patient who has had problems with recurrent rhinitis symptoms with conjunctivitis and cough with congestion. She has taken Seldane in the past with some improvement. She has had symptoms off and over the past several years and is now here for further evaluation to R/C allergic rhinitis.

PAST MEDICAL HISTORY: She is not allergic to any medications. She has tubal ligation in the past. She is a nonsmoker. She is divorced.

ASSESSMENT: Allergic rhinitis and bronchitis.

did not actually see me.

<i>A. 7-99</i>	<i>Upper Respiratory Disease</i>
<i>A. URS symptoms</i>	<i>COPD</i>
<i>P. Will have me to ask PA exam of</i>	

JUNE 7, 1994

26517WHC

SUBJECTIVE: She has been having problems with left pleuritic pain at times. She has also had cough and congestion.

OBJECTIVE: WT 201. BP 120/88. She has diminished breath sounds with some scattered rhonchi. ~~She is having left pleuritic pain but her CXR shows no evidence of active infiltrates.~~

ASSESSMENT: Acute and chronic bronchitis.

PLAN: She is to take Organidin Elixir 1 tsp qid x 10 days because of the congestion. I gave her Ceclor to take for 10 days because of the cough productive of mucoid sputum.

10/3/94 Ceclor 250 mg TID x 10d.

Middtown

May 15, 1996

The patient called stating she had a bad chest cold, coughing up yellow and wanting medicine.

Plan: Cipro 500mg bid x 10 days was called to Medical Associates.

May 24, 1996

The patient called stating she has a chest congestion with yellow and has one tablet of Cipro left and would like to change.

Plan: Ceclor 250mg tid x 10 days was called to Medical Associates.

September 23, 1996

The patient called with complaints of bronchitis and low grade temperature, chills. Ceclor 250mg tid x 10 days called to Medical Associates.

September 30, 1996

The patient called stating she has been taking Ceclor 250mg for a week and has not improved while on this, still has productive cough, fever, chills. Cefax 400mg i qd x 10 days called to Medical Associates.

PROGRESS NOTES
MINNIE DONALD
OCTOBER 17, 1996

26517 WHC

SUBJECTIVE: She has been having problems with cough and congestion. She has taken several antibiotics to no avail and continues to have a low grade fever. She has also been found to have evidence of anemia for which she is seeing Dr. Bassi.

OBJECTIVE: WT, 201. BP, 140/82. Her chest was relatively clear. She does have diminished breath sounds at the bases bilaterally. A CXR was obtained in the office today showing no evidence of pneumonia. She does have chronic bronchitis however.

ASSESSMENT: Persistent fever in a patient with chronic and acute bronchitis.
PLAN: She is to take Proxin 400 mg bid x 10 days. Continue all other therapy the same.

1-17-97

No Show mailed 1-22-97

CLAIMANT ATTACHMENT 001

PAGE NO. 4 OF 6

... was not obtained in the office today.
ASSESSMENT: Sinobronchial syndrome in a patient with chronic bronchitis.
PLAN: 1. I gave her Depo-Medrol 40 IM. 2. She is to take Clpro 500 mg bid x10 days because she had just completed a course of Cefin.

Rm^s
WHC/rft


William W. Culbertson, M.D.

01/26/98

26517WHC

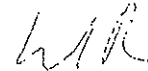
MINNIE DONALD

SUBJECTIVE: I have not seen her in several years. Recently, she has been h problems with cough, congestion, and some increasing dyspnea. She just t course of Floxin. She has taken Floxin repeatedly in the past. She has not CXR obtained in more than a year. She also has never had the pneum vaccination. I have seen her off and on over the years because of allergies recurrent bronchitis.

ASSESSMENT: Recurrent bronchitis in a patient who has been treated with without improvement.

PLAN: Pneumovax today. We also changed her antibiotic to Ceftin 250 mg bid x10 days. She is to call if symptoms worsen. Hopefully the pneumovax give her some protection in the future.

WHC/rft



CLAIMANT ATTACHMENT 001

PAGE NO. 6026

CLAIMANT ATTACHMENT A

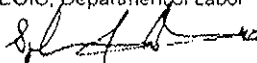
PAGE NO. 11821

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 003

PAGE NO. 1 of 1

CLAIMANT ATTACHMENT A

PAGE NO. 13 of 21

FILE NUMBER:



[Number Deleted]

DOCKET NUMBER:

19516-2004

DECISION DATE:

October 15, 2004

more claim
+ HE was not
diagnosed with
COPD

NOTICE OF FINAL DECISION AND REMAND ORDER

This is the decision of the Final Adjudication Branch 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 set forth below, your claim is accepted.

STATEMENT OF THE CASE

On January 15, 2002, you filed a Form EE-1, Claim for Benefits under the EEOICPA. The claim was based, in part, on the assertion that you were an employee of a Department of Energy (DOE) contractor at a DOE facility. You stated on the Form EE-1 that you were filing for chronic obstructive pulmonary disease (COPD).

On the Form EE-3, Employment History, you stated you were employed at the Paducah gaseous diffusion plant (PGDP) in Paducah, Kentucky from 1951 to 1954 and 1957 to 1963. The Department of Energy verified this employment as June 6, 1952 to December 23, 1954 and January 20, 1958 to January 11, 1963.

The district office found that the medical evidence disclosed findings consistent with the diagnosis of chronic beryllium disease (CBD). On August 20, 2004, the Jacksonville district office issued a decision recommending that you are entitled to compensation of \$150,000 for chronic beryllium disease and that COPD is a consequential obstructive lung injury of CBD. The district office's recommended decision also concluded that you are entitled to medical benefits effective January 15, 2002 for chronic beryllium disease and the consequential injury of COPD.

On September 20, 2004, the Final Adjudication Branch received your written notification that you waive any and all objections to the recommended decision.

I have reviewed the medical evidence and find that it is sufficient to establish a diagnosis of pre-January 1, 1993 chronic beryllium disease. According to § 7384(13)(B) of the Act, the term "established chronic beryllium disease" means chronic beryllium disease as established by occupational or environmental history, or epidemiologic evidence of beryllium exposure; and, any three of the following criteria:

<http://www.dol.gov/csa/regs/compliance/overseer/eoicpa/Decisions/GenericDecisions/Decisions...>

CLAIMANT ATTACHMENT 004
CLAIMANT ATTACHMENT A PAGE NO. 164

PAGE NO. 9/1/2004 12:31 [JOB NO. 5312] 002

As the above prior EEOICPA case decision/ Docket Number 19516 – 2004 affirms, the EEOICPA Director Ms. Leiton has failed to consider Ms. Donald's COPD (Bronchitis) which as stated above, **"On August 20, 2004, the Jacksonville office issued a decision recommending that you are entitled to compensation of \$150,000 for chronic beryllium disease and that COPD is a consequential obstructive lung injury of CBD."**

Additional NEW Evidence in Support of Claim for Neuropathy Caused by Work Place Exposures at PGDP to TCE, TCA, Benzene, among other Toxic Hydro Carbons

JUN 11, 2012 05:02P

000-000-00000

page 1

NEUROLOGY GROUP OF PADUCAH, PLLC

YV. M. WELLS, M.D.

NIRANJAN SIVA, M.D.

BOARD CERTIFIED IN NEUROLOGY



June 12, 2012

Re: *Mimmie Donald*
DOB: 4/9/46

To Whom It May Concern:

I am treating this patient for peripheral neuropathy, fibromyalgia and multiple sensitivity syndrome.

In my opinion this patient's exposure to a toxic substance at a DOE facility was a significant factor in aggravating, contributing to, or causing the illness, and that it is at least as likely as not the exposure to such toxic substance was related to employment at a DOE facility. The SEM lists toxic neuropathy as a possible specific health effect of exposure to arsenic, ethylene oxide, lead and mercury.

Thank you,

Niranjana Siva, M.D.
Board Certified in Neurology

2005 N. Gladesville, Suite 301 • Paducah, KY 42001-8800
Phone: 270-437-5830 • Office: KY 288-11-0200 • Fax: 270-437-5753

06/13/2012 WED 10:27 (JOB NO. 6519) 001

Conclusion

Ms. Donald respectfully requests that her claims for CBD, peripheral neuropathy, and fibromyalgia be re-reviewed for compliance with the statutes and regulations and reopened after an independent review of the evidence which supports her claim for "Wage Loss" is performed. Ms. Donald has presented evidence which confirms she has met her "burden of proof" for her medical benefits and claims for compensation for CBD, peripheral neuropathy, and fibromyalgia, and wage loss as required by the statutes, regulations and prior EEOICPA case decisions. Although Ms. Donald has been in contact with Cold War

Patriot attorney and founder Chris Hays, esq., she would prefer to have Ms. Leiton make any final determinations of her statutory and regulatory compliance to avoid Director Leiton's remand of the case after Ms. Donald's legal counsel files her appeal in U.S. federal court.

Reference "Basis for Reopening" noted as follows:

Basis for Reopening

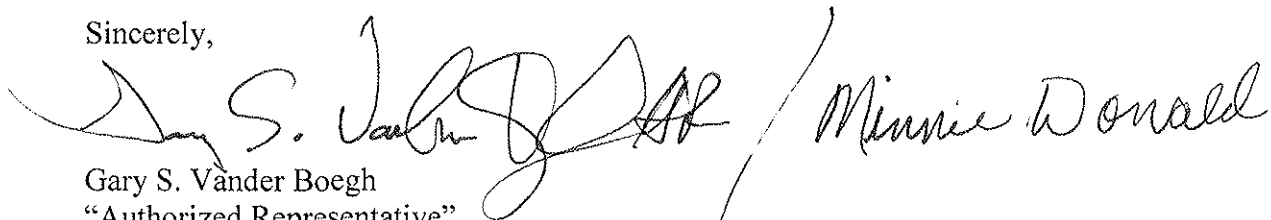
§ 30.320 Can a claim be reopened after the FAB has issued a final decision?

(a) At any time after the FAB has issued a final decision pursuant to § 30.316, and **without regard to whether new evidence or information is presented or obtained**, the Director for Energy Employees Occupational Illness Compensation may reopen a claim and return it to the FAB for issuance of a new final decision, or to the district office for such further development as may be necessary, to be followed by a new recommended decision. The Director may also vacate any other type of decision issued by the FAB.

(b) **At any time** after the FAB has issued a final decision pursuant to § 30.316, a claimant may file a written request that the Director for Energy Employees Occupational Illness Compensation reopen his or her claim, provided that the claimant also submits new evidence of either covered employment or exposure to a toxic substance, or identifies either a change in the PoC guidelines, a change in the dose reconstruction methods or an addition of a class of employees to the Special Exposure Cohort.

Please do not hesitate to contact me at 270-559-1752 or 270-450-0850, should you have any further questions.

Sincerely,

Handwritten signatures of Gary S. Vander Boegh and Minnie Donald. Gary's signature is on the left, and Minnie's is on the right, separated by a vertical line.

Gary S. Vander Boegh
"Authorized Representative"

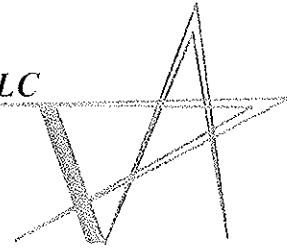
Vice President- Commonwealth Environmental Services, LLC.

Cc: DOJ – Bill Campbell & John Kolar (by email)

*** FAX MULTI TX REPORT ***

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ERROR -----

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



Fax Cover Sheet

To: Department of Labor
Rachel Leiton
Mark Stewart
Greg Knapp
James Bibeault
James Johnson

From: Gary S. Vander Boegh

Fax: 202-693-1465
904-357-4785

Date: 06/13/12

Phone:

Pages: _____ Pages including the Cover Sheet

Re: Minnie Donald
xxx-xx-7985

CC:

Urgent For Review Please Comment Please Reply Please Recycle

Comments:

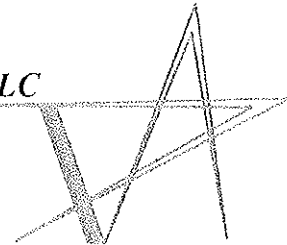
If you have any questions, please feel free to contact me at 270-450-0850 or 270-559-1752.

Regards,

*** TX REPORT ***

JOB NO. 2186
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919043574785
ERROR -----

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