



Fax Cover Sheet

To: U. S. Department of Labor
Tonya H. Fields

From: Gary S. Vander Boegh

Fax: (202) 513-6401

Date: 07/29/12

Phone:

Pages: ___ Pages including the Cover Sheet

Re: Gregory K. Lahndorff
xxx-xx-6558

CC:

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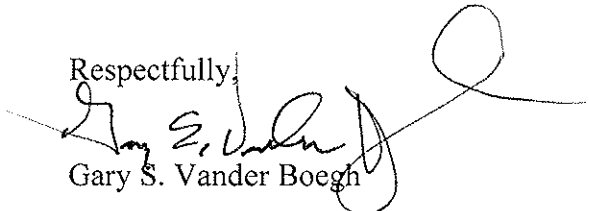
Comments:

Ms. Fields,

I hereby provide our "Request for Reconsideration" on behalf of CES, LLC claimant Gregory K. Lahndorff, based on DOL OWCP/ EEOICPA "Arbitrary and Capricious" Final Decision issued on July 5, 2012 that was in violation of statutory and regulatory requirements.

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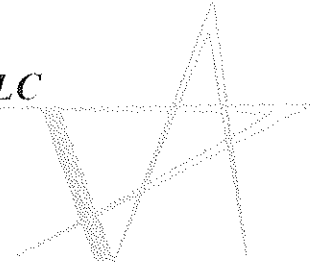
Respectfully,


Gary S. Vander Boegh

"Authorized Representative"

COMMONWEALTH ENVIRONMENTAL SERVICES, LLC

A 100% Employee-Owned and Operated 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

July 29, 2012

U. S. Department of Labor/DEEOIC
Final Adjudication Branch
P.O. Box 77918
Washington, D.C. 20013-7918
Fax (202) 513-6401

Employee: Gregory K. Lahndorff
File No: xxx-xx-6558

Attn: Tonya H. Fields, CE & FAB Director Thomasyne L. Hill

Dear Ms. Fields & Ms. Hill,

As Authorized Representative (AR) for Mr. Gregory K. Lahndorff, I hereby respectfully request a reconsideration of the final decision issued July 5, 2012 by the Department of Labor (DOL). Please provide Ms. Leiton and Ms. Kressley with a copy of this correspondence requesting reconsideration based on the DOL's "Arbitrary and Capricious" Final Decision issued by Office of Worker's Compensation (OWCP), Division of Energy Employee Occupational Illness Compensation Program (DEEOICP). The arbitrary and capricious decision was clearly made in violation of statutory and regulatory requirements to minimize compensation made to nuclear workers injured at the Paducah Gaseous Diffusion Plant (PGDP). It should be further noted that prior to Ms. Fields and Ms. Hill issuing the Final Decision of July 5, 2012, Ms. Fields issued a cover letter dated June 27, 2012 apparently reflecting that Mr. Lahndorff's claims denial was issued by someone other than Ms. Fields.

This request for reconsideration will afford Ms. Kressley, Esq., and Ms. Leiton the opportunity to affirm or deny Mr. Lahndorff's Part B and E claims for Chronic Beryllium Disease (CBD)

(among other diagnosed conditions) pre-1993 statutory requirements (3 of 5 criteria) prior to Mr. Lahndorff's filing a tort action in U.S. federal court against the Department of Labor (DOL), and beryllium vendors identified by the Department of Energy (DOE) and Health, Safety, and Security (HHS). As noted below, "throughout the course of its operations, the potential for beryllium exposure existed at the site."

<http://www.hss.doe.gov/healthsafety/fwsp/advocacy/faclist/showfacility.cfm>

244 - Paducah Gaseous Diffusion Plant

State: Kentucky **Location:** Paducah

Time Period: 1951-July 28, 1998; July 29, 1998 - present (Remediation)

Facility Type: Department of Energy

Facility Description: The Department of Energy's (DOE) Paducah Gaseous Diffusion Plant opened in 1952 to enrich uranium for nuclear weapons. During the plant's Cold War history, more than one million tons of uranium was processed.

Construction of the Paducah plant began in 1951 in response to the increased demand for enriched uranium for nuclear weapons production. Initial operations began in 1952 and full operation occurred in 1955. In addition to producing enriched uranium for weapons, the plant also supplied enriched uranium for the Navy and commercial fuel. The Paducah Plant also acted as the uranium hexafluoride feed point for all gaseous diffusion plants until 1964.

Throughout the course of its operations, the potential for beryllium exposure existed at this site.

On July 1, 1993, the United States Enrichment Corporation (USEC)*, a government-owned corporation formed under in July 1998, continues to produce low enriched uranium for commercial use DOE remains responsible for addressing the environmental cleanup resulting from historic plant operations.

From 1952- July 28, 1998 (the date USEC was privatized) all 3,556 acres were exclusively controlled by the Government and considered the DOE facility. After that date, only roads and grounds outside the perimeter fence plus approximately 200 acres of grounds inside the fence remain under the exclusive control of DOE's Office of Environmental Management. The remainder of the footprint is leased to USEC to support uranium enrichment operations.

ENRICHMENT OPERATIONS CONTRACTORS: Lockheed Martin Utility Services (1995-1999); Martin Marietta Utility Services (1993-1995); Martin Marietta Energy Systems (1984-1993); Union Carbide Corporation Nuclear Division (1952-1984).

DUF6 CONVERSION CONTRACTORS for design, construction and operation of the Depleted Uranium Hexafluoride Conversion Project: Babcock and Wilcox Conversion Services (2011-present); Uranium Disposition Services (2002-2011).

REMEDIATION CONTRACTORS: LATA Environmental Services of Kentucky (2010-present); Paducah Remediation Services-EM Remediation (2006-2010); Swift and Staley-EM Infrastructure Contractor (2005-present); Bechtel Jacobs Company (1998-2006); Lockheed Martin Energy Systems (1995-1998); Martin Marietta Energy Systems(1988**-1995).

* Note: Rights and liabilities pertaining to USEC are governed by the USEC Privatization Act (P.L. 104-134, April 26, 1996). This includes regulatory oversight by the Nuclear Regulatory Commission of that portion of the plant under USEC control.

** Note: In 1988, DOE began its environmental remediation program.

Claimant's Evidence Supporting Appeal of Arbitrary and Capricious Decision to Deny Claims

On 10/21/10, the Honorable Secretary of Labor, Hilda Solis, DEEOICP Director Rachel Leiton, FAB Director Thomasyne L. Hill and Jacksonville District Director Jim Bibeault, received evidence and exhibits supporting Mr. Lahndorff's claim for Part B and E compensation for his diagnosed illnesses which were ignored by EEOICPA claims examiners and FAB hearing officials, with special emphasis on FAB Director Thomasyne L. Hill.

<http://www.commonwealthenvironmentalservices.com/documents/160088077.pdf>

Failure to Follow Statutory and Regulatory Provisions of the EEOICPA in Violation of Established CBD Statutory Criteria & Retribution by DOE and DOL for Assisting DOJ

Madam Secretary, Hilda Solis, DEEOICP Director Rachel Leiton, and District Director Jim Bibeault failed to establish procedural policies that would require DOL Claims Examiners (CE's) to base their decisions of statutory compliance of the EEOICPA. The lack knowledge, experience, and training has led to claims being inappropriately while other claims based on identical statutory compliance were approved for compensation.

Aside from the appearance of a retaliatory motive involving Mr. Lahndorff's Part B and E wrongful claims denial, it also clearly evident that Mr. Lahndorff's diagnosed illnesses were not approved based on the need to minimize claims at the PGDP, due to the illegal acceptance and enrichment of "spent nuclear reactor returns" as confirmed in the NRDC complaint filed under the provisions of the "False Claims Act" (Reference Lockheed Martin vs. U.S. Department of Justice vs. Lockheed Martin Corporation filed in or about 1998. Former and current PGDP nuclear workers, some of which might have assisted the DOJ investigators, among other nuclear workers exposed to toxic chemicals and radiation without their knowledge, were then singled out by the Department of Energy (and their contractors) for their claims to be denied. By the DOE failing to provide worker records and the DOL denying valid "statutory" claims, FCA liabilities against Lockheed Martin (DOE contractor) would mitigate potential damages, that may be trebled under the FCA statutes. The claimant reserves the right to produce evidence of the retaliatory motive to deny his claim during the discovery process.

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.

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.)**"....

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/facilist/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)

Gregory K. Lahndorff's Medical Reports, Radiology Report and Tissue Analysis Report Established Lung Disease and Chronic Obstructive Pulmonary Disease (COPD) Reflecting Compliance With Pre-1993 CBD Criteria

Gregory K. Lahndorff provides Claimant Attachment (CA) – 001 which is a variety of pre-1993 medical and x-ray reports; CA-002 is a Spirometer test dated 12/18/91; and CA-003 contains various other medical notes showing his continual medical treatment; CA-004 are pulmonary prescription information; CA-005 is a memo from Peter Turcic dated 08/25/05 in support of the claim for CBD as follows:

1/ CA-001, On 12/15/76 a X-ray of the chest showed parenchymal and hilar calcifications. A chest X-ray on 2/12/81 showed calcified granulomatous disease. There were changes present in a X-ray report dated 3/11/85. On 7/30/91 calcified hilar nodes are present.

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

2/ CA-002, The Spirometer test depicts a result below the predicted normal range.

Conclusion: Compliance pursuant with § 7384L(13)(B), Criteria II.

3/ CA-003, The various post-1993 medical and X-ray reports show Mr. Lahndorff's continued medical treatment for his respiratory conditions.

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

4/ CA-004, Greg Lahndorff presents his prescription information for his Albuterol and Advair

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

5/ CA-005, "Memorandum from DEEOICP Director Peter Turic" dated 8/25/05 regarding causal relationship between respiratory disorders and CBD.

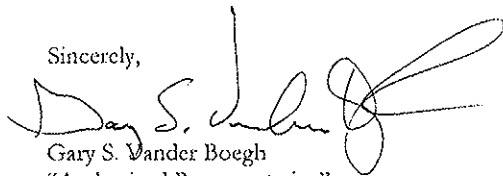
Conclusion: Compliance pursuant with § 7384L(13)(B), Criteria's I, II.

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

Based on the above medical evidence, Greg Lahndorff has met his statutory burden of proof for EEOICPA Part B Compensation in the amount of \$150,000 and EEOICPA Part E compensation based on the whole body impairment established by a physician of his choice Dr. Craig Uejo not to exceed \$250,000, per the statutory requirements USC § 73841 (13) (B). **More importantly, Greg Lahndorff is entitled to medical benefits for his "statutorily established" illness of Chronic Beryllium Disease, that includes all consequential illnesses related to his CBD per the Peter Turic memorandum regarding "Chronic Pulmonary Disease", dated 8/25/2005**

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.

Cc. Honorable Secretary of Labor Hilda Solis by facsimile (202) 693-6111

U.S. Department of Labor
200 Constitution Avenue, NW
Room S-2018
Washington, DC 20210

Malcolm Nelson, EEOICP Ombudsman (by email and facsimile)
David Nolan, Esq. (by email w/attachments)

Failure to Recognize Testimony Presented at EEOICPA Hearing

Madam Secretary, Hilda Solis, DEEOICP Director Rachel Leiton, FAB Director Thomasyne L. Hill and District Director Jim Bibeault failed to consider the testimony presented under oath during the FAB Hearing that confirmed had met his statutory "burden of proof" as confirmed by all evidence, exhibits and prior DOL decisions have confirm, including (but not limited to) all decisions issued by Tom Daugherty, among other FAB hearing officers. (Reference Exhibit 1 excerpt from Ms. Minnie Donald's CBD claim) .

1 Regarding your claim for CBD, by letters
2 dated October 25, 2010 and March 22, 2011, the
3 Jacksonville District Office advised you and your
4 Authorized Representative that the evidence of record
5 was insufficient to establish a diagnosis of CBD.

6 You both were further advised of the
7 documentation needed to establish your claim under
8 the Act and were afforded 30 days from the date of
9 each letter to submit additional documentation.

10 In response, the following was submitted.

11 (1) A copy of a list of experts containing
12 your personal records from the DOE, which included
13 notes from a December 15, 1976 X-ray noting that the
14 chest showed a few parenchymal hilar calcifications
15 without evidence of active lung disease. The actual
16 X-rays were not included, nor was the document signed
17 by a physician.

18 (2) A notation or a list of X-rays
19 indicating that an X-ray on February 12, 1981 showed
20 a lateral view of the chest showed calcified
21 granulomas. This notation was not signed by a
22 physician and the actual test was not included in
23 this instance either.

Therefore, Mr. Lahndorff has established his statutory and regulatory “burden of proof” and is entitled to his Part B and Part E compensation and medical benefits for his compliance with the EEOICPA (“the Act”). Mr. Lahndorff reserves the right to provide the DOL CE-2 to provide additional evidence within 15 days of the date of this request for reconsideration based on a final decision in violation of the arbitrary and capricious legal standards and only after the same evidence has been presented to the Department of Justice.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Gary S. Vander Boegh". The signature is fluid and cursive, with a long horizontal stroke at the end.

Gary S. Vander Boegh, Vice President
Commonwealth Environmental Services, LLC

Cc. Department of Justice by email U. S. Attorney General Eric Holder (askdoj@usdoj.gov)
U.S. Attorney Bill Campbell by email and facsimile

Exhibit No. 1

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).

The claim for diabetes is denied since the condition of diabetes is not a covered medical condition as defined under section 7384i(15) of the Act and section 30.5(z) of the implementing regulations. 42 U.S.C. § 7384i(15), 20 C.F.R. § 30.5(z).

Jacksonville, FL

Sidne M. Valdivieso
Hearing Representative

*** FAX TX REPORT ***

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COMMONWEALTH ENVIRONMENTAL SERVICES, LLC



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Fax: (202) 513-6401	Date: 07/29/12
Phone:	Pages: ___ Pages including the Cover Sheet
Re: Gregory K. Lahndorff xxx-xx-6558	CC:

Urgent For Review Please Comment Please Reply Please Recycle

Comments:

Ms. Fields,

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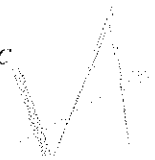
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Respectfully;

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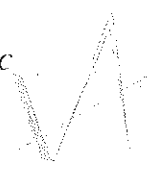
Respectfully,

*** TX REPORT ***

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TRANSACTION OK -----
ERROR gvandy@cesllc.net
rvandy@cesllc.net

Gary Vander Boegh
shanna

COMMONWEALTH ENVIRONMENTAL SERVICES, LLC



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