

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.

On April 25, 2002, the Jacksonville district office issued a decision recommending that the claimed condition of diabetes is not a covered medical condition pursuant to section 73841(15) of the Act and section 30.111 of the implementing regulations. 42 U.S.C. § 73841(15), 20 C.F.R. § 30.111.

However, based on my review of the written record, I find that the evidence meets the criteria for establishing pre-1993 chronic beryllium disease (CBD). For diagnoses before January 1, 1993, the Act, at section 73841(13)(B), requires the presence of:

occupational or environmental history, or epidemiologic evidence of beryllium exposure; and any three of the following criteria:

1. Characteristic chest radiographic (or computed tomography (CT) abnormalities;
2. Restrictive or obstructive lung physiology testing or diffusing lung capacity defect;
3. Lung pathology consistent with chronic beryllium disease;
4. Clinical course consistent with a chronic respiratory disorder;
5. Immunologic tests showing beryllium sensitivity. 42 U.S.C. § 73841 (13)(B).

The Department of Energy has verified [employee]'s employment with the Tennessee Eastman Corporation (a pre-cursor to the Y-12 plant) in Oak Ridge, Tennessee, from June 27, 1945 to April 4, 1946, as well as employment at the K-25 gaseous diffusion plant (GDP) in Oak Ridge, Tennessee, for the period of August 14, 1947 through May 31, 1980. The DOE has acknowledged that beryllium was present at these facilities during the above periods. Therefore, [employee] had an occupational history of beryllium exposure.

Based on the evidence on file, the ~~medical records~~ were referred to Dr. Lee Newman, an expert on beryllium diseases, for a review and determination of whether the evidence met the statutory criteria for a diagnosis of CBD, in accordance with EEOICPA Bulletin No. 02-26, issued September 13, 2002. A discharge summary dated March 20, 1992, describes the results of chest x-rays, which showed

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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 73841(7) of the Act; and that [employee]'s chronic beryllium disease is a covered condition under section 73841(13) of the Act and section 30.207 of the implementing regulations. 42 U.S.C. §§ 73841(7), 73841(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 73841(15) of the Act and section 30.5(z) of the implementing regulations. 42 U.S.C. § 73841(15), 20 C.F.R. § 30.5(z).

Jacksonville, FL

Sidne M. Valdivieso
Hearing Representative

99-2002-0009

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