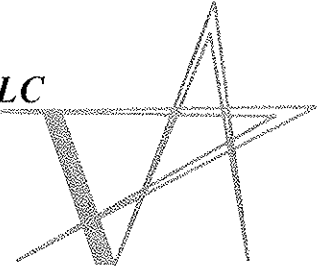


COMMONWEALTH ENVIRONMENTAL SERVICES, LLC

"A Native American - Woman Owned Company"



Fax Cover Sheet

To: Department of Labor
Betty Jo Fortune

From: Gary S. Vander Boegh

Fax: 202-513-6401

Date: 08/22/12

Phone:

Pages: ___ Pages including the Cover Sheet

Re: Anna K. Vander Boegh
xxx-xx-0317

CC:

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Comments:

Please find the attached supplemental evidence for Mrs. Vander Boegh.

If you have any questions, please let me know.

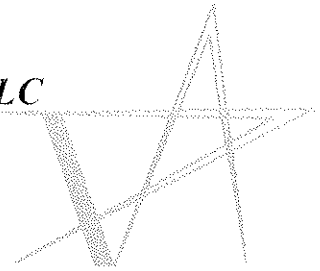
Regards,

Gary Vander Boegh

A handwritten signature in black ink, appearing to read "Gary Vander Boegh". The signature is fluid and cursive, with a large, prominent loop at the end.

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

August 21, 2012

U. S. Department of Labor, DEEOIC
Division of Energy Employees Compensation
Final Adjudication Branch
P.O. Box 77918
Washington, DC 20013-7918

Attention: Betty J. Fortune -Supplemental Evidence In Support of Part B and E Claims
for CBD and Hearing Loss

File Number: xxx-xx-0317
Employee: Anna K. Vander Boegh

Dear Ms. Fortune,

As "Authorized Representative" (AR) for Anna K. Vander Boegh, I submit the following "Request for Final Decision" based on evidence of statutory compliance with the Energy Employee Occupational Illness Compensation Program Act (EEOICPA) as follows:
<http://www.dol.gov/owcp/energy/regs/compliance/law/EEOICPAALL.htm>. Mrs. Vander Boegh also provides evidence of compliance with the "Performance of Functions; Claims for Compensation Under the Energy Employees Occupational Illness Compensation Program Act of 2000, as amended "Final Rule:" This rule became effective on February 27, 2007, and therefore applies to all claims filed on or after that date. This Final Rule also applies to any claims that are pending on February 27, 2007.

[.http://www.commonwealthenvironmentalservices.com/documents/1945808140.pdf](http://www.commonwealthenvironmentalservices.com/documents/1945808140.pdf)

(Page 23 of 101)

X. Executive Order 12988 (Civil Justice Reform)

This final rule has been drafted and reviewed in accordance with E.O. 12988 and will not unduly burden the federal court system. While Part B of EEOICPA does not provide any specific procedures that claimants under that Part must follow in order to seek review of decisions on their claims, Part E specifies that claimants under that Part have 60 days to file petitions for review of decisions on their claims in the United States district courts, and mandates the use of an

“arbitrary and capricious” standard of review. It is reasonably likely that some EEOICPA claimants will seek review of adverse decisions in United States district courts pursuant to 28 U.S.C. 1331 (for claims under Part B of EEOICPA) or the EEOICPA itself (for claims under Part E). **This rule should help minimize the burden placed on courts by litigation seeking to challenge decisions under EEOICPA by providing claimants with an opportunity to seek administrative review of adverse decisions prior to resorting to the court system,** and by providing a clear legal standard for affected conduct. The rule has been reviewed carefully to eliminate drafting errors and ambiguities.

The Department of Labor issued a 7 page final decision 12/06/11 denying Mrs. Ann Vander Boegh’s claim for Chronic Beryllium Disease (CBD). (See attached decision on Web. <http://www.commonwealthenvironmentalservices.com/documents/992638600.pdf>)

Anna Vander Boegh filed a “timely” appeal/ reconsideration brief of the final decision denial on January 3, 2012, providing a 37 page brief addressing the basis of the request for reconsideration.

<http://www.commonwealthenvironmentalservices.com/documents/1253817908.pdf>
To date, no response to the CBD request for reconsideration has been received from the Department of Labor, most probably due to the potential for Mrs. Vander Boegh’s and Mr. Stephen Douglas’s CBD and Cancer claims establishing a precedent for compensating the claimants in the amount of \$150,000 for their separate illnesses in the amount of \$300,000 total for each.

(Page 34 of 101)

The regulations in this part describe the rules governing filing, processing, and paying claims for benefits under both Part B and Part E of EEOICPA.

(a) Part B of EEOICPA provides for the payment of either lump-sum monetary compensation for the disability of a covered Part B employee due to an occupational illness or for monitoring for beryllium sensitivity, as well as for medical and related benefits for such illness. Part B also provides for the payment of monetary compensation for the disability of a covered Part B employee to specified survivors if the employee is deceased at the time of payment.

(f) Subpart F: the rules relating to the payment of monetary compensation available under Parts B and E of EEOICPA. It includes provisions on medical monitoring for beryllium sensitivity, on the identification, processing and recovery of overpayments of compensation, and on the maximum aggregate amount of compensation payable under Part E.

**EACH SEPARATE CLAIM UNDER PART B IS TO BE COMPENSATED IN
THE AMOUNT OF \$150,000 – CLAIMANTS ENTITLED TO A TOTAL OF
\$450,000 IF DIAGNOSED WITH CBD, CANCER, OR SILICOSIS**

The intent of Congress was clearly established to provide compensation in the amount of \$150,000 for each illness (Chronic Beryllium Disease, Cancer, and Silicosis) under Part B of the EEOICPA. The Department of Labor OWCP is required to compensate workers who have suffered from illnesses incurred during their performance of their duties per § 7384d, "Establishment of Energy Employees Occupational Illness Compensation Program." Per § 7384l, "Definitions for program administration", a covered employee means any of the following; (a) A covered beryllium employee, (b) A covered employee with cancer, (c). The DOL OWCP provided no evidence to support the FAB hearing officer's contention that Congress limited Part B compensations to a "single" payment / maximum of \$150,000. Instead, Congress recognized that DOE nuclear workers would be entitled to compensation in the amount of \$150,000 "per illness (CBD, Cancer, and Silicosis) listed in Part B.

7384r. Separate treatment of chronic silicosis

(a) SENSE OF CONGRESS—The Congress finds that employees who worked in Department of Energy test sites and later contracted chronic silicosis should also be considered for inclusion in the compensation program. Recognizing that chronic silicosis resulting from exposure to silica is not a condition unique to the nuclear weapons industry, it is not the intent of Congress with this subchapter to establish a precedent on the question of chronic silicosis as a compensable occupational disease. Consequently, it is the sense of Congress that a further determination by the President is appropriate before these workers are included in the compensation program.

(b) CERTIFICATION BY PRESIDENT—A covered employee with chronic silicosis shall be treated as a covered employee (as defined in section 7384(1)) of this title for the purposes of the compensation program required by section 7384d of this title unless the President submits to Congress not later than 180 days after October 30, 2000 the certification of the President that there is insufficient basis to include such employees. The President shall submit with the certification any recommendations about the compensation program with respect to covered employees with chronic silicosis as the President considers appropriate.

(c) EXPOSURE TO SILICA IN THE PERFORMANCE OF DUTY—A covered employee shall, in the absence of substantial evidence to the contrary, be determined to have been exposed to silica in the performance of duty for the purposes of the compensation program if, and only if, the employee was present for a number of work days aggregating at least 250 work days during the mining of tunnels at a Department of Energy facility located in Nevada or Alaska for tests or experiments related to an atomic weapon.

(d) COVERED EMPLOYEE WITH CHRONIC SILICOSIS—For purposes of this subchapter, the term "covered employee with chronic silicosis" means a Department of Energy employee, or a Department of Energy contractor employee, with chronic silicosis who was exposed to silica in the performance of duty as determined under subsection (c).

(e) CHRONIC SILICOSIS—For purposes of this subchapter, the term "chronic silicosis" means a non- malignant lung disease if—

(1) the initial occupational exposure to silica dust preceded the onset of silicosis by at least 10 years; and

(2) a written diagnosis of silicosis is made by a medical doctor and is accompanied by—

(A) a chest radiograph, interpreted by an individual certified by the National Institute for Occupational Safety and Health as a B reader, classifying the existence of pneumoconioses of category 1/0 or higher;

- (B) results from a computer assisted tomograph or other imaging technique that are consistent with silicosis; or
- (C) lung biopsy findings consistent with silicosis.

Pub. L. 106-398, Title XXXVI, § 3627; Pub. L. 107-107, § 3151(a)(3)

Anna Vander Boegh proceeded to file her "Request for Reconsideration" (RR) of the "Final Decision issued by the Department of Labor (DOL) dated December 6, 2011. The RR is based on the following:

Findings of Fact

- On July 12, 2009, AR Gary Vander Boegh provided a timely request for "Request for Reconsideration" Exhibit 1 (reference pages 4 thru 7).
- On July 15, 2011, the Jacksonville district office issued a recommended decision under Part E of the Act, concluding that you had 21 % impairment of the whole person based on your chronic bronchitis. The district office recommended that you be awarded \$52,500.00 (\$2500 for each of the (21) twenty-one impairment percentage points).
- The district office also recommended that your claim for CBD Linder Parts B and E of the Act and hearing loss under Part E of the Act be denied although the DOL District Office was in possession proof of toxic substances exposures, that included but was not limited to "radiation from process gas" that resulted in symptoms of acute radiation syndrome (ARS) (headaches, loss of appetite, weight loss, appendicitis, pneumonia, bronchitis, proteinuria, etc) prior to DOL issuing claims denials (Reference Exhibit 1).
- On March 23, 2010, Mrs. Vander Boegh filed a claim for hearing loss under Part E of the Act and on September 7, 2010, she filed a claim for benefits based on CBD (Chronic Beryllium Disease) under Parts Band E of the Act.
- Mrs. Vander Boegh has requested all supplemental records compiled after the original DOL documents were sent to her by overnight mail in an effort to determine the completeness of her DOL record files. Upon receipt, Mrs. Vander Boegh may supplement the information found in her files at the District Office.

Disputed Findings of Fact 12/06/11 & Response

- The DOL issued a Notice of Final Decision on June 11, 2009 - File Number: 306200317; Docket Number: 10029607-2006 concluding, "You worked for Union Carbide, a covered DOE contractor at the Oak Ridge Gaseous Diffusion Plant (K-25) and at the Paducah Gaseous Diffusion Plant, a covered DOE facility, from January 10, 1952 to March 20, 1953."

Anna K. Vander Boegh's Response: Mrs. Vander Boegh provides a certified copy of the social security earnings that confirm (Exhibit No. 2) she worked at Oak Ridge GDP during 1944, in addition to the period stated by the FAB hearing official.

- “3) A search of the SEM and the totality of the evidence is insufficient to establish that toxic substance exposure at a covered DOE facility was "at least as likely as not" a significant factor in causing, contributing to or aggravating your hearing loss.”

Anna K. Vander Boegh's Response: Although Mrs. Vander Boegh has clearly established her statutory “burden of proof” for exposures to toxic chemicals listed in both the Oak Ridge and PGDP “Site Exposure Matrices” (SEM) that includes UF6, Heavy Metals (antimony, arsenic, barium, beryllium, cadmium, manganese, mercury, lead, nickel, silver, vanadium, zinc, and PCBs., TCE, Uranium isotopes 234, 235 & 238, transuranic isotopic “contaminants (cobalt 60, plutonium 238, 239, & 240, neptunium, cesium 134 & 137, tritium, strontium-90, etc.) from processed “spent nuclear fuels.” The SEM’s for both nuclear sites that employed Mrs. Vander Boegh clearly lists causal links for the chemicals produced at each GDP to Mrs. Vander Boegh’s diagnosed illnesses. Therefore, Mrs. Vander Boegh is not required by the statutes to solicit a separate medical opinion since she has already established a causal link to her diagnosed illnesses per her past and current medical records and reports, contrary to what the FAB hearing official and CE have concluded. (Reference Exhibits 3, 4, & 5)

- “4) The medical evidence of record is insufficient to establish that the employee was diagnosed with CBD.”

Anna K. Vander Boegh's Response: Mrs. Vander Boegh again presents the statutory evidence she provided to the attention of DOL Secretary Hilda Solis and District Director James Bibeault, and Cassandra Watts on 10/20/10. In Exhibit 3, claims examiner Cassandra Watts acknowledges in her letter dated 10/26/10 her receipt of Mr. Vander Boegh’s medical information. stating, “On October 20, 2010, The District Office received your faxed information that was submitted in response to our request for medical evidence to support CBD. The information included a medical note from Dr. Kanchan Koirala, dated October 5, 2010. Dr. Koirala noted the employee probably has beryllium sensitivity.

The FAB hearing official has overlooked previous medical information provided by the claimant that supports 3 of 5 CBD Pre-1993 criteria as DOL (Reference DOL letter dated. Mrs. Vander Boegh reserves the right to supplement the medical information by providing medical diagnosis for CBD and CHF. (Reference Exhibit No. 7).

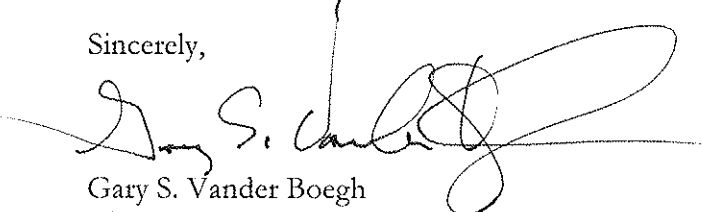
Conclusion

The claimant Anna K. Vander Boegh respectfully requests that based on the evidence presented during the FAB hearing, affidavits, hearing transcripts, and supplemental medical evidence that confirms compliance with pre-1993 CBD criteria and chronic heart failure, that the DOL EEOICPA Director reverse and approve the Anna K. Vander Boegh's claim for Chronic Beryllium Disease for Part B in the amounts of \$150,000 and a Part E claim for CHF for an amount to be determined by performing an impairment evaluation using a physician of Mrs. Vander Boegh's choosing. Unless the DOL Director (and those assigned to this claim) have any further administrative proceedings available for Mrs. Vander Boegh, Mrs. Vander Boegh will consider the aforementioned claims to be administratively complete upon issuance of an unfavorable or favorable "Request for Reconsideration."

Should the DOL EEOICPA Director reject/ deny Mrs. Vander Boegh's "Request for Reconsideration", Mrs. Vander Boegh, with all administrative proceedings terminated/closed to her, may move within 60 days of claim denial of Reconsideration to file an appeal of the Director's adverse decision in the U.S. Western District federal court. At such time, Mrs. Vander Boegh may proceed to litigation having exhausted all administrative remedies and without fear of the DOL EEOICPA Director withdrawing said claim "back to the EEOICPA administrative process" after Mrs. Vander Boegh has filed in federal court.

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 w/Attachments (202) 693-6111
U.S. Department of Labor
200 Constitution Avenue, NW
Room S-2018
Washington, DC 20210

Former Director OWCP Shelby Hallmark (by email)
Current Acting Director OWCP Gary P. Steinberg
EEOICPA Director Rachel Leiton
FAB Final Adjudication Branch Chief LuAnn Kressley

U.S. Attorney Eric Holder by email & facsimile (202) 307-6777
David Hale, John Kolar, and Bill Campbell by email and facsimile (502) 582-5911

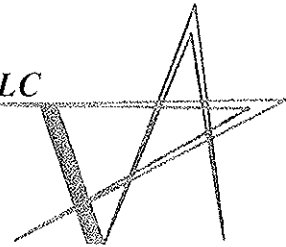
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To: Department of Labor Betty Jo Fortune	From: Gary S. Vander Boegh
Fax: 202-513-6401	Date: 08/22/12
Phone: _____	Pages: ____ Pages including the Cover Sheet
Re: Anna K. Vander Boegh xxx-xx-0317	CC: _____

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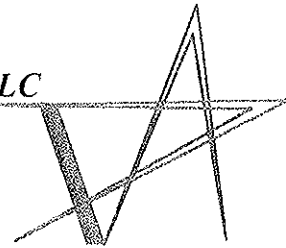
Gary Vander Boegh

*** TX REPORT ***

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