

U.S. Department of Labor

Office of Workers Compensation Programs  
Division of Energy Employees Compensation  
400 West Bay Street, Suite 722  
Jacksonville, FL 32202

RECEIVED  
5-8-12  
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May 3, 2012

Gary S. Vander Boegh  
4645 Village Square Drive, Suite F  
Paducah, KY 42001

Dear Mr. Vander Boegh:

I am writing in reference to Galen E. Langston's claim for benefits under the Energy Employees Occupational Illness Compensation Program Act (the Act).

On October 6, 2011, on behalf of Galen E. Langston, you requested a reopening of his claim for benefits under the Act for brain stem cancer (ponti glioma) and chronic bronchitis.

According to our records you are the authorized representative in the above case. The attached correspondence is directed to you for you to handle in this capacity.

If you have any questions about this Director's Order, you may contact the Jacksonville District Office at 1-877 336-4272.

Sincerely,



JAMES BIBEAULT  
District Director, DEEOIC  
Jacksonville, FL



May 3, 2012

Galen E. Langston  
[REDACTED]

Dear Mr. Langston:

I am writing in reference to your claim for benefits under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA or the Act). On November 25, 2002 and July 25, 2007, the Washington D.C. Final Adjudication Branch (FAB) issued final decisions denying your claim for compensation benefits under Part B and Part E, respectively, of the Act.

In the November 25, 2002 final decision, the FAB denied the claim because the medical evidence was insufficient to establish that you had been diagnosed with the claimed condition of brain stem cancer. In the July 25, 2007 final decision, the FAB denied your claim for chronic bronchitis under Part E of the Act finding that exposure to a toxic substance at a Department of Energy (DOE) facility was "not at least as likely as not" a significant factor in causing, contributing to, or aggravating that condition as claimed.

The basis for my review of your claim stems from the receipt of new medical evidence in the form of a medical narrative report that indicates a diagnosis of brain cancer. Further, a review of the department's Site Exposure Matrix (SEM) reflects new information as to potential exposure to toxic substance(s) that have the health effect of chronic bronchitis.

The Director for the Division of Energy Employees Occupational Illness Compensation (DEEOIC) has the discretionary authority to issue a Director's Order reopening a claim at any point following issuance of a final decision under 20 CFR 30.320. The Director has delegated authority to issue a Director's Order regarding a case reopening to the District Director having jurisdictional authority over the case in limited circumstances. After appropriate review, I have determined there is sufficient evidence to warrant further development of your claim. The attached Director's Order vacates the FAB decisions as noted and

reopens your claims for the identified conditions for appropriate development and issuance of a new recommended decision.

If you have any questions about the attached Director's Order, you may contact the District Office at 1 (877) 336-4272.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Bibeault". The signature is fluid and cursive, with the first letter of each name being capitalized and prominent.

J  
JAMES BIBEAULT  
District Director, DEEOIC  
Jacksonville, FL

cc: Gary S. Vander Boegh —

May 3, 2012

EMPLOYEE: Galen E. Langston  
CLAIMANT: Galen E. Langston  
FILE NUMBER: XXXXX8003  
DOCKET NUMBER: 156-2002  
10009703-2007

### **DIRECTOR'S ORDER**

On November 25, 2002, a Notice of Final Decision was issued denying your claim for benefits under Part B and on July 25, 2007 denying your claim for benefits under Part E of the Energy Employees Occupational Illness Compensation Program Act (EEOICPA or the Act).

The Director for the Division of Energy Employees Occupational Illness Compensation (DEEOIC) has the discretionary authority to issue a Director's Order reopening a claim at any point following issuance of a final decision under 20 CFR 30.320. The Director has delegated authority to issue a Director's Order regarding a case reopening to the District Director having jurisdictional authority over the case in limited circumstances. Because of new developments described in this Director's Order, the November 25, 2002, Notice of Final Decision under Part B for the claimed condition of brain stem cancer and the July 25, 2007, Notice of Final Decision under Part E for the claimed condition of bronchitis are hereby vacated for those conditions only, and the case reopened under this provision.

### **BACKGROUND**

The evidence of record shows that a Form EE-1, (Claim for Employee Benefits) was filed on July 21, 2001 for the condition of brain stem cancer. On September 15, 2006, the employee filed an additional claim under the EEOICPA for multiple conditions, to include chronic bronchitis.

The employee claimed he developed these conditions as a result of employment at the Paducah Gaseous Diffusion Plant (PGDP).

Medical records establish a diagnosis of bronchitis as early as March 1981. The case also identifies medical records that confirm the presence of a 1.5 centimeter brain lesion within the left pons area of the brain on August 20, 2002.

Form EE-3 (Employment History) was submitted claiming employment at the PGDP in Paducah, Kentucky. Dates of employment claimed were from March 19, 1973 to March 2000. The evidence of record substantiates employment at PGDP. Dates of employment confirmed by the Department of Energy (DOE) were from March 19, 1973 to approximately March 21, 2002 (last

work day). The evidence of record substantiates the employee's occupation as that of maintenance mechanic.

On July 26, 2002, the District Office issued a recommended decision denying the claim for compensation, under Part B, because the employee had not submitted sufficient medical evidence to support a diagnosis for the claimed condition of brain stem cancer. The recommended decision was forwarded to the Final Adjudication Branch (FAB) in accordance with EEOICPA procedures for an independent assessment and issuance of a final decision. On November 25, 2002, the FAB issued a final decision affirming the recommended decision to deny the claim.

On May 11, 2007, the District Office issued a recommended denying the claim for benefits under Part E of the Act finding that the evidence was insufficient to establish that it was at least as likely as not that exposure to a toxic substance at a DOE facility was a significant factor in aggravating, contributing to, or causing the illnesses of chronic bronchitis. The recommended decision was forwarded to the Final Adjudication Branch (FAB) in accordance with EEOICPA procedures for an independent assessment and issuance of a final decision. On July 25, 2007, the FAB issued a final decision affirming the recommended decision to deny the claim.

On October 6, 2011, a request for reopening of the claim for brain cancer (pontine glioma) and chronic bronchitis was received. The reopening request was based on new medical evidence and new evidence of exposure to a toxic substance.

## **DISCUSSION**

Upon further review, I have determined additional development of the claim is appropriate for the conditions of brain stem cancer and chronic bronchitis.

My determination for this decision is based on the following facts:

The designated Authorized Representative (AR) submitted a medical narrative report from James R. Roush, M.D. dated December 22, 2011, which indicated based on his review of Mr. Langston's medical records, including radiographs provided to him by Mr. Langston. He reports, "...along with a review of his documentation of his workplace exposures to radioactive transuranics that were delivered to PGDP from the spent nuclear reactor tails (i.e. plutonium, neptunium, cesium 137), toxic chemicals, and heavy metals, I affirm within a reasonable degree of medical certainty Dr. Lavin's diagnosis of "low grade" pontine glioma (brain cancer). I further note that it is at least as likely as not, a significant factor in causing or contributing to his pontine glioma/brain cancer." In Dr. Roush's report he mentions an USW Worker Health Protection physician, Charles Fikar, M.D., who confirmed that Mr. Langston had pontine glioma.

This is new information that was not available at the time of the November 25, 2002 Final Decision.

In an ongoing effort to obtain and organize exposure data for all covered Part E facilities, the department's Division of Energy Employees Occupational Illness Compensation has constructed a database called the Site Exposure Matrices (SEM) to act as a repository of information about toxic substances present at covered facilities.

The site contains toxic substance exposure information related to Department of Energy (DOE) and Radiation Exposure Compensation Act facilities.

As a matter of development regarding the request to reopen the claim for chronic bronchitis, the district office initiated a search of the SEM to determine if there was new information regarding exposure as related to the condition of chronic bronchitis and the claimant's labor category while employed at the PGDP. Information from the SEM revealed potential exposure to ammonia, asbestos, cement and welding fumes for the health effect of COPD. This reflects a change in the SEM since 2007.

Accordingly, based on new evidence as it relates to the claimed conditions of brain stem cancer and chronic bronchitis, there is sufficient basis to warrant additional development of the claim and issuance of a new recommended decision for these conditions.

## **CONCLUSION**

The November 25, 2002 Final Decision, for the condition of brain stem cancer under Part B and the July 25, 2007 Final Decision, for the condition of chronic bronchitis, under Part E of the Act are hereby vacated. The District Office will complete any necessary development and issue a new recommended decision. Should there be disagreement with the recommended decision, opportunity to file an objection and request an oral hearing or review of the written record will be afforded.



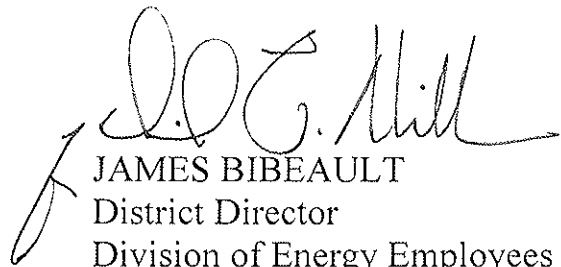
JAMES BIBEAULT  
District Director  
Division of Energy Employees  
Occupational Illness Compensation  
Jacksonville, FL

## CERTIFICATE OF SERVICE

I hereby certify that on May 3, 2012, a copy of the Director's Order was sent by regular mail to the following:

Gary S. Vander Boegh, Authorized Representative ✓  
4645 Village Square Drive, Suite F  
Paducah, KY 42001

Galen E. Langston  


  
JAMES BİBEAULT  
District Director  
Division of Energy Employees  
Occupational Illness Compensation  
Jacksonville, FL