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U.S. DEPARTMENT OF LABOR

OFFICE OF WORKERS' COMPENSATION PROGRAMS
DIVISION OF ENERGY EMPLOYEES OCCUPATIONAL
ILLNESS COMPENSATION
FINAL ADJUDICATION BRANCH



APR 06 2012

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

Employee: Gregory K. Lahndorff
File Number: XXXXX6558

Dear Mr. Vander Boegh:

Enclosed is a copy of the transcript from the hearing that was conducted in the above referenced claim on March 27, 2012. Another copy of the transcript will be made a part of the case file and a copy will be provided to the claimant, Gregory K. Lahndorff, with a copy of this letter.

Any comments concerning the transcript must be submitted within 20 days of the date of this letter. As explained during the hearing, any additional evidence or argument must be submitted to the address noted below on or before April 26, 2012. Please be advised that if you or the claimant would like to request an extension to this date, the request must be in writing and received not later than April 26, 2012. Any comments on the transcript or request for an extension can be mailed to:

U.S. Department of Labor
DEEOICP, FAB – Attn: Tonya Fields
P.O. Box 77918
Washington, DC 20013-7918.

Documents can also be faxed to: (202) 513-6401. Please include the employee's name and file number on all documents submitted. If you or the claimant has any questions concerning the transcript, please contact Ms. Fields toll free at (866) 538-8143.

Thank you for your cooperation.

Sincerely,

Thomasyne L. Hill, Asst. Chief
Final Adjudication Branch

Cc: Gregory K. Lahndorff

APPEARANCES

On behalf of the Employee:

GARY STEWART VANDER BOEGH
4645 Village Square Drive
Paducah, Kentucky 42001

SHANNA ROSE McLAUGHLIN
4645 Village Square Drive
Paducah, Kentucky 42001

GREGORY KENT LAHNDORFF
2570 Olivet Church Road
Paducah, Kentucky 42001

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P R O C E E D I N G S

(2:00 p.m.)

HEARING REPRESENTATIVE FIELDS: Today is Tuesday, March 27, 2012. The time is 2:00 p.m.

My name is Tonya H. Fields. I have been designated to conduct this hearing and to receive the objections of Gregory K. Lahndorff, who is represented by Gary S. Vander Boegh.

The case is identified under Claim Number 6558, and carries Docket Number 20110802-25234-1.

The hearing is convened under the Energy Employees' Occupational Illness Compensation Act. I will make future references to it as the Act. It is governed by the provisions of Title 20, Section 30.314 of the Code of Federal Regulations.

These regulations provide claimants with the right to object to the Recommended Decision of the District Office.

While this hearing is informal and not governed by the Rules of Evidence, I will administer an oath or affirmation to every person giving testimony today.

I will first review a history of your claim as it appears in the written record. Then you may present testimony, argument, or any additional

1 evidence addressing the merits of your claim.

2 On April 19, 2002, you filed a claim for
3 benefits under Part B of the Act, Form EE-1,
4 indicating that you developed allergies, high blood
5 pressure, dead thyroid, migraine headaches,
6 borderline diabetes and diverticulosis as a result of
7 your employment at a Department of Energy, or DOE,
8 facility.

9 On February 26, 2003, you amended your
10 claim to include the condition of skin cancer.

11 On April 27, 2005, you filed a Request for
12 Review by Physicians' Panel, Form DOE F-350.2 under
13 Part D of the Act, for chronic migraine, thyroid
14 disease, allergies, chronic bronchitis, arthritis,
15 diverticulosis and chemical imbalance of the brain.

16 With the repeal of Part D and the enactment
17 and implementation of Part E, your Part D claim has
18 been treated as a claim for benefits under Part E.

19 You filed additional EE-1s for the
20 following conditions: June 14, 2006, tumor removed
21 from vocal cords, dermatographism and asthma;
22 February 27, 2007 septoplasty bilateral inferior
23 turbinoplasty and bilateral maxillary antrostomy;
24 August 1, 2008 type 2 diabetes and allergies;
25 August 3, 2009, basal cell carcinoma, or BCC; and on

1 October 22, 2010, chronic beryllium disease, or CBD.

2 On November 25, 2002, the FAB issued a
3 Final Decision denying your claim under Part E of the
4 Act for the conditions of allergies, high blood
5 pressure, dead thyroid, migraine headaches,
6 borderline diabetes and diverticulosis.

7 On September 9, 2009, the Final
8 Adjudication Branch issued a Final Decision approving
9 your claim for benefits under Part E of the Act for
10 the condition of skin cancer and awarding you medical
11 benefits for the treatment of the accepted condition.

12 On February 26, the FAB issued a Final
13 Decision following a hearing denying your claim for
14 benefits under Part B of the Act, concluding that
15 your skin cancer was not at least as likely as not a
16 50 percent or greater probability caused by your
17 employment at a covered DOE facility.

18 This conclusion was based in part on the
19 results of the Dose Reconstruction completed by the
20 National Institute for Occupational Safety and
21 Health, or NIOSH.

22 Within its decision, the FAB established
23 that you were an employee at the Paducah Gaseous
24 Diffusion Plant, a covered DOE facility, from April
25 21, 1975 to at least April 9, 2003, or that is the

1 date of verification at that time.

2 By letter dated March 23, 2011, you advised
3 the District Office of your intent to pursue
4 impairment benefits for your skin cancer, selecting
5 Craig M. Uejo to perform your impairment evaluation.

6 By letter dated March 25, 2011, the
7 District Office advised you and your chosen physician
8 that the condition of skin cancer was accepted under
9 Part E of the Act. The District Office further
10 advised your doctor of the medical evidence that is
11 necessary to perform an impairment rating for your
12 accepted condition.

13 On May 23, 2011, the District Office
14 received your physician's April 7, 2011 impairment
15 evaluation report in which he used the *Fifth Edition*
16 of the American Medical Association, or AMA, Guides
17 to the Evaluation of Permanent Impairment. He
18 calculated your whole body impairment rating to be 5
19 percent.

20 He also concluded that you are at maximum
21 medical improvement in regards to your accepted
22 condition, and the District Office concluded that
23 your physician meets the Division of Energy
24 Employees' Occupational Illness Compensation criteria
25 for performing an impairment rating.

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.

24 In support of your claim for the other
 25 claimed conditions, you submitted contemporaneous

1 medical documentation, which included the following:
2 a December 14, 1999 medical note indicating a
3 diagnosis of chronic bronchitis; a March 30, 2001
4 medical note indicating a diagnosis of persistent
5 migraine headaches; a July 1, 2003 medical note
6 indicating a diagnosis of hypothyroidism; a July 24,
7 2008 medical note indicating a diagnosis of diabetes,
8 type 2; a January 30, 2000 note signed by John
9 Randall Resser -- Dr. Resser indicated a diagnosis of
10 septoplasty and bilateral interior turbinoplasty and
11 bilateral maxillary antrostomy -- an October 19, 2010
12 medical report signed by James N. Beickholz stating
13 that you were being treated for chronic obstructive
14 pulmonary disease and bronchitis, however, he did not
15 provide a history, a diagnosis or a diagnosis date,
16 or copies of tests that were used to determine your
17 diagnosis.

18 By letters dated March 7, 2007 and May 24,
19 2011 the District Office advised you that the
20 evidence of record was insufficient to establish
21 diagnosis for the claimed conditions of allergies,
22 arthritis, chemical imbalance in the brain, tumor of
23 vocal cords and asthma. You were afforded 30 days
24 from the date of each letter to submit documentation
25 to establish your claim.

1 The District Office reviewed source
2 documents used to compile the Department of Labor's
3 Site Exposure Matrices, or SEM, to determine whether
4 or not it is possible that given your labor category
5 and the work processes engaged in you were exposed to
6 toxic substances in the course of employment, which
7 corresponds to the claimed conditions.

8 The SEM did not identify any toxins at the
9 Paducah Gaseous Diffusion Plant with a known link to
10 chronic migraines, thyroid disease, allergies,
11 chronic bronchitis, arthritis, diverticulosis,
12 chemical imbalance in the brain, tumor in the vocal
13 cords, asthma, septoplasty, bilateral interior
14 turbinoplasty and bilateral maxillary antrostomy and
15 diabetes.

16 On July 28, 2011, the District Office
17 referred your file to a U.S. Department of Labor
18 District Medical Consultant for review and opinion
19 regarding the claimed condition of chronic
20 bronchitis.

21 The DMC stated that the limited evidence in
22 the file was insufficient for a definitive diagnosis
23 of the condition of chronic bronchitis as it relates
24 to your exposure to toxins at a covered DOE facility.

25 Consequently, on August 2, 2011, the

1 District Office issued a Recommended Decision, which
2 concluded that you are entitled to \$2,500 for each of
3 the 5 percentage points as a result of your skin
4 cancer and recommended that you be awarded impairment
5 compensation in the amount of \$12,500.

6 The District Office also concluded that the
7 evidence of record is insufficient to establish that
8 you were diagnosed with the claimed conditions of
9 allergies, arthritis, chemical imbalance of the
10 brain, tumor of vocal cords, asthma, chronic
11 bronchitis, diabetes and CBD.

12 The District Office further concluded that
13 there is insufficient evidence meeting the at least
14 as likely as not criteria that toxic exposure at a
15 DOE facility was a significant factor in aggravating,
16 contributing to, or causing the claimed conditions of
17 CBD, chronic migraine, thyroid disease, chronic
18 bronchitis, diverticulitis, tumor of vocal cords,
19 septoplasty and bilateral interior turbinoplasty and
20 bilateral maxillary antrostomy, a diabetes.

21 Based on these conclusions, the District
22 Office recommends denial of your claim for benefits
23 under Part E of the Act for these conditions.

24 On September 9, 2011, the Final
25 Adjudication Branch issued a Final Decision awarding

1 you \$12,500 in impairment compensation based on the 5
2 percent whole person impairment due to your skin
3 cancer.

4 On September 26, 2011, the Final
5 Adjudication Branch received Gary Vander Boegh's
6 Letter of Objection to the Recommended Decision
7 issued by the District Office and request for an oral
8 hearing on your behalf.

9 He objected to the Recommended Decision for
10 the following reasons.

11 During the 28 years of your employment, you
12 were exposed to numerous toxic substances that
13 caused, contributed to, or aggravated the claimed
14 conditions. Radioactive transuranics and toxic
15 chemicals are linked to the illnesses listed in the
16 Paducah Gaseous Diffusion Plant Site Exposure
17 Matrices.

18 As I stated earlier, while this hearing is
19 designated as an informal process, anyone giving
20 testimony today is required to do so under oath.

21 If you would raise your right hand please.

22 Do you swear to tell the truth in the
23 testimony you are about to give today?

24 MR. GREGORY LAHNDORFF: Yes.

25 HEARING REPRESENTATIVE FIELDS: For the

1 record, state your full name and address.

2 MR. GREGORY LAHDORFF: Gregory Kent
3 Lahndorff; 2570 Olivet Church Road, Paducah, Kentucky
4 42001.

5 HEARING REPRESENTATIVE FIELDS: Mr. Vander
6 Boegh, please raise your right hand.

7 Do you swear to tell the truth in the
8 testimony you are about to give today?

9 MR. GARY VANDER BOEGH: I do.

10 HEARING REPRESENTATIVE FIELDS: State your
11 full name and address for the record.

12 MR. GARY VANDER BOEGH: Gary Stewart Vander
13 Boegh; 4645 Village Square Drive, Paducah, Kentucky
14 42001.

15 HEARING REPRESENTATIVE FIELDS: Shanna
16 McLaughlin, do you swear or affirm to tell the truth
17 in the testimony you are about to give today?

18 MS. SHANNA McLAUGHLIN: Yes.

19 HEARING REPRESENTATIVE FIELDS: Please
20 state your full name and address for the record.

21 MS. SHANNA McLAUGHLIN: Shanna Rose
22 McLaughlin; 4645 Village Square Drive Paducah,
23 Kentucky 42001.

24 MR. GREGORY LAHDORFF: They left out the
25 part they didn't have enough evidence to show I have

1 a broken heart over their decision. I gave them all
2 the stuff they said I didn't give them.

3 MR. GARY VANDER BOEGH: Are you ready for
4 me to proceed?

5 HEARING REPRESENTATIVE FIELDS: Before you
6 start, can we clarify, are you still employed there?

7 MR. GREGORY LAHNDORFF: At the plant, no.
8 I retired in 2003.

9 HEARING REPRESENTATIVE FIELDS: Okay.

10 MR. GARY VANDER BOEGH: Pages 1 through 8,
11 we included the Recommended Decision dated -- let's
12 see if we have the date. The Recommended Decision
13 that we objected to.

14 MS. SHANNA McLAUGHLIN: We requested a
15 hearing back in September.

16 HEARING REPRESENTATIVE FIELDS: The
17 Recommended Decision was August 2, 2011.

18 MS. SHANNA McLAUGHLIN: We objected to it
19 in September, and we are just now having a hearing,
20 which is March.

21 HEARING REPRESENTATIVE FIELDS: Okay.

22 MS. SHANNA McLAUGHLIN: I'm not sure what
23 happened with this one.

24 MR. GARY VANDER BOEGH: This one is one of
25 those that a lot of things are falling through the

1 cracks.

2 MR. GREGORY LAHNDORFF: I can tell you what
3 happened, we asked for a hearing. When we told them
4 we were going to federal court because we didn't get
5 one, we got one.

6 STATEMENT

7 MR. GARY VANDER BOEGH: Before you go
8 there, we don't need to go there right now.

9 Tonya is here for a job to hold this
10 hearing. What we are going to do is make a note that
11 from September to this date, might as well go April,
12 we have six months once we requested the hearing,
13 Tonya.

14 I believe we did request a clarification of
15 what happens when we don't have a hearing within six
16 months. We don't have a Final Decision within six
17 months. I'm sure it has been thrown in your lap to
18 hurry and get this thing going.

19 If we can expedite it real quick, because
20 I'm going to give you some of the similar exhibits
21 that we had before to help you.

22 HEARING REPRESENTATIVE FIELDS: Okay.

23 MR. GARY VANDER BOEGH: The bottom line is,
24 we have already presented -- and you have those in
25 your file. We requested -- and I believe we have

1 obtained some of the supplemental information we have
2 asked for Greg. We have plenty of time to do that.

3 We have submitted Mr. Lahndorff's -- and
4 several other claimants' files -- to the Secretary of
5 Labor. There are 12 of them. Mr. Lahndorff's claim
6 is one of those. We will provide that, Shanna if you
7 don't mind, provide that again as part of the
8 supplemental information. I don't have it today
9 because I have it on another computer.

10 MS. SHANNA McLAUGHLIN: Okay.

11 HEARING REPRESENTATIVE FIELDS: Okay.

12 MR. GARY VANDER BOEGH: Would you prefer
13 those on CD or just fax it?

14 HEARING REPRESENTATIVE FIELDS: Fax it to
15 me.

16 MR. GARY VANDER BOEGH: We will do that.

17 The bottom line claim here for Greg is
18 that he has met his burden of proof for his pre-1993
19 statutory CBD claim criteria.

20 Again, as we have done throughout today, we
21 have heard the reason for his denial is that he was
22 not diagnosed with CBD. There was no medical
23 diagnosis of CBD, if I am correct.

24 I want to refer you back -- first of all, I
25 have then all numbered in a sequence.

1 HEARING REPRESENTATIVE FIELDS: Okay.

2 MR. GARY VANDER BOEGH: As you are familiar
3 with the statement on page 9 -- this is again the
4 Exhibit No. 1 is referring to Minnie Donald's claim.

5 Let's strike that. Can we do that?

6 HEARING REPRESENTATIVE FIELDS: Just go
7 ahead.

8 (Whereupon, Exhibit No. 1
9 was identified, marked and
10 received into evidence.)

11 MR. GARY VANDER BOEGH: This is in another
12 claim, so I copied that.

13 We have a decision dated April 24, 2003,
14 and that Docket Number is 20099-2002. In that Final
15 Decision by Ms. Sidne Valdivieso, her decision
16 specifically notes the following based on another
17 similar CBD claim where I believe Dr. Newman had
18 indicated that the interstitial markings were not
19 necessarily linked to CBD.

20 I want to read into the record the comment
21 that has a hash mark there about halfway down the
22 page. It is important to note that the determination
23 as to whether the evidence meets the criteria for CBD
24 is a statutory one, rather than a medical one.
25 Therefore, the case is acceptable even though Dr.

1 Newman's interpretation of the medical evidence led
2 him to believe that the Employee most likely
3 experienced a connective tissue disorder rather than
4 CBD.

5 Since the medical evidence meets three of
6 the above five statutory criteria, it is sufficient
7 to establish a claim on the basis of CBD. Therefore,
8 with Exhibit No. 1, one can look at with excluding
9 the statement that he has failed to submit medical
10 evidence, which is now in this decision not required,
11 you can look at the criteria that Mr. Lahndorff has
12 presented, the X-ray criteria, as the statutory
13 requirements allow you to do.

14 Even though you are trained to only review
15 these cases based on procedures, bulletins, memos and
16 emails, that Ms. Leiton guides all the Hearing
17 Officers and Hearing Reps and Claims Examiners,
18 Ms. Leiton is clearly wrong when she attempts to
19 implement something that blocks the intent of the
20 statutes -- or excuse me -- the regulations and then
21 a more stringent statute.

22 That takes us to Exhibit No. 2. This is
23 the Bringham case again, James W. Bringham v.
24 Department of Labor Office of Worker Compensation,
25 which you are bound by those rules and those

1 approvals, or those decisions. It's a memorandum and
2 order that again says although the Supreme Court
3 indeed struck down on page 11 -- let me back up.

4 On page 11, there is a reference that the
5 regulations cannot be more stringent than the
6 statutes and the rule. The Procedural Rules are that
7 you cannot trump a regulation or offset a regulation
8 with a bulletin or a procedure. They have to be --
9 they have to compliment and be no more strict than
10 the regulation, and the same is for the statute.

11 If it is not addressed in the procedure,
12 but it is addressed in the statute, you can't insert
13 interpretation of the statute; and that's what this
14 case is telling DOL that they cannot trump the
15 statute by a more harsh stricter interpretation on
16 their part.

17 I will read this into the record. 20
18 C.F.R. Section 30.25 (A) (2) (iii). I may not be read
19 as reducing the coverage of the statute. The statute
20 provides coverage, and I will tell you what I will do
21 also, I will provide you the entire case.

22 This cutting and pasting is saving paper,
23 but it's not helping you in the overall perspective.
24 There is a sub-note there 3, that I believe it even
25 says some other things in it that are very important.

1 to this case.

2 The statute provides for coverage of
3 activities related to production or processing of
4 beryllium. It goes on to specifically talk about
5 that.

6 Footnote No. 4, which is not captured in
7 the statement here, and I want to make sure we get
8 that to you. At the very end of that statement, it
9 says -- I'm just going to read that whole section.
10 Defendants call for a more stringent standard --
11 defendants being DOL -- contending that the agency's
12 view is deemed to be reasonable so long as it is not
13 flatly contradicted by plain language.

14 Defendant's motion at 10, for this
15 proposition Defendants cite the Supreme Courts
16 decision in Department of Treasurer v. Federal Labor
17 Relations Authority. I won't go on to read all the
18 citation part.

19 The defendants, DOL, the interpretation of
20 that decision goes too far. Although the Supreme
21 Court indeed struck down an agency's interpretation
22 that was flatly contradicted by the plain language of
23 the statute, nowhere in the opinion does the Court
24 require, underlined, such blatant agency
25 misconstruction.

1 That is signed by Judge James Robertson,
2 with the relevance being that Mr. Lahndorff is
3 entitled to his statutory interpretation when
4 procedures or regulations attempt to contradict the
5 statute.

6 Therefore, what we will provide, in
7 addition to his prior submittal and evidence of
8 compliance, which I think you just read in to the
9 record, and I think would be redundant to show
10 additional. I think we have given it like four
11 times.

12 We would prefer that Mr. Lahndorff's case
13 be reviewed for compliance with the statutory
14 provisions that he has already provided based on
15 those exhibits we have provided.

16 MR. GREGORY LAHNDORFF: I have a picture of
17 the tumor, if they want to see it.

18 MR. GARY VANDER BOEGH: Hold on; we are not
19 talking the tumor right now.

20 MR. GREGORY LAHNDORFF: That's one of the
21 things that they said I didn't give them that I did.

22 MR. GARY VANDER BOEGH: We have 30 days to
23 submit information, and we can name it if you like.

24 MR. GREGORY LAHNDORFF: I can't give them a
25 picture of the brain tumor they gave me.

1 MR. GARY VANDER BOEGH: The whole purpose
2 here is --

3 MR. GREGORY LAHNDORFF: Gave me total
4 distress for a while.

5 MR. GARY VANDER BOEGH: Hold on a minute.
6 We can have those discussions off line, if we can.

7 MR. GREGORY LAHNDORFF: I can show you a
8 letter where they gave me a brain tumor.

9 MR. GARY VANDER BOEGH: That's all I have.

10 HEARING REPRESENTATIVE FIELDS: Okay. I
11 don't have any further questions either.

12 I did. What was your job title?

13 MR. GARY VANDER BOEGH: Operator.

14 HEARING REPRESENTATIVE FIELDS: You were an
15 operator as well, okay.

16 MR. GREGORY LAHNDORFF: When in the feed
17 plant I was a fry cook getting a fried bath at 6.

18 HEARING REPRESENTATIVE FIELDS: I will
19 advise you of what will transpire from this date
20 forward.

21 The proceedings will be transcribed. A
22 copy of the transcript will be provided to you.

23 I will leave the record open for another 30
24 days to submit any additional evidence. You will
25 also have 20 days from the date of mailing of the

