



Fax Cover Sheet

To: U. S. Congressman Ed Whitfield
(202) 225-3547

From: Gary S. Vander Boegh

Fax: 202-224-2499- Senator Mitch
McConnell & 202-224-4343 Senator
Rand Paul

Date: July 19, 2013

Phone:

Pages: ___ Pages including the Cover Sheet

Re: Use of DOL Memos to circumvent
EEOICPA

CC:

☒ Urgent ☒ For Review ☐ Please Comment ☒ Please Reply ☐ Please Recycle

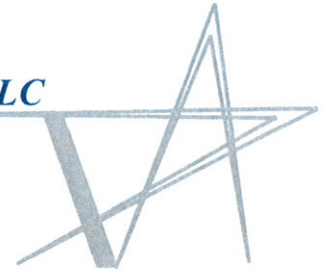
Comments:

Please see the attached evidence demonstrating illegal EEOICP claims denials for PGDP claimants that has resulted in over \$100 million in wrongful claims denials based on the use of internal memos and procedures more stringent than the EEOICPA (federal law.)

Gary S. Vander Boegh

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

July 19, 2013

Congressman Whitfield and Director Pape,

Attached please find the following reference to DOL OWCP's use of procedures to illegally deny PGDP nuclear workers their Congressional entitlements. The information Mr. Whitfield has been provided over the last four months has also been provided to other government agencies, government officials, members of Congress, and news agencies in an effort to ensure transparency, compliance with, and the enforcement of federal EEOICPA law. At this time, to ensure Congressman Whitfield is proceeding to the Congressional Investigation phase and willing to enforce the federal law regarding EEOICPA, on behalf of my CES claimants Congressman Whitfield is requested to confirm his position regarding his support for those claimants that have demonstrated to him that a violation of federal law has actually occurred as captured in the attached "Leiton Memo" from the EECAP.org/ ANWAG web site as follows: http://eecap.org/ANWAG_News.htm (Reference Exhibit No. 1). Exhibit No. 2 reflects communications regarding potential criminal penalties associated with "willfully and knowingly violating 18 U.S.C. Section 1001.

Example of Bulletin More Stringent Than Statute

Department at Paschall Trucking Company she stated that Paschall Trucking Company does not haul any radioactive materials.

In accordance with Bulletin 03-27, dated May 28, 2003 and PM Part 0-500-1 (v) in order for an individual working for a subcontractor to be determined to have performed a "service" at a covered facility, the individual must have performed work or labor for the

EEOICPA BULLETIN NO.03-27

Issue Date: May 28, 2003

Effective Date: May 28, 2003

Subject: Establishing covered subcontractor employment.

..."Service – In order for an individual working for a subcontractor to be determined to have performed a "service" at a covered facility, the individual must have performed work or labor for the benefit of another within the boundaries of a DOE or beryllium vendor facility. Example of workers providing such services would be janitors, construction and maintenance workers.

Delivery of Goods- The delivery and loading or unloading of goods alone is not a service and is not covered for any occupation, including workers involved in the delivery and loading or unloading of goods for construction and or maintenance activities."...

PART B—PROGRAM ADMINISTRATION

§ 7384I. Definitions for program administration

- (11) The term "Department of Energy contractor employee" means any of the following:
- (A) An individual who is or was in residence at a Department of Energy facility as a researcher for one or more periods aggregating at least 24 months.
 - (B) An individual who is or was employed at a Department of Energy facility by—
 - (i) an entity that contracted with the Department of Energy to provide management and operating, management and integration, or environmental remediation at the facility; or
 - (ii) a contractor or subcontractor that provided services,** including construction and maintenance, at the facility.

The information provided above and Exhibits 1 & 2 clearly reflects violations of EEOICPA federal law. Unless Congressman Whitfield disagrees with the attached statements made by Director Leiton where federal laws may not be trumped by memos and procedures more stringent than federal law, approximately 43+ CES claimants have directed me to respectfully request that Congressman Ed Whitfield personally meet in the CES conference room with 43+ claimants represented by Commonwealth Environmental Services to ensure their concerns receive the appropriate public attention with his full support. Arrangement are in progress and the final time, date, and room location will be left to my good friend Congressman Whitfield.

Call me at (270) 559-1752, if you do not agree with any information I have provided!

Respectfully,


Gary S. Vander Boegh

Cc: Senator Rand Paul by facsimile and email attachment
Senator Mitch McConnell by facsimile and email attachment
Bill Campbell and Jack Kolar, U.S DOJ by email attachment
Jack Conway Kentucky Attorney General by facsimile and email attachment

EXHIBIT No. 1

**(Admission by Director Leiton That DEEOICP Internal Memos Are Not To Be Used
Establish Final Policy or Override Statutes)**

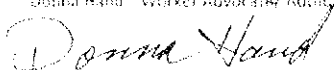
To Whom it may concern

The following letter may be used to reopen all claims that used memos to deny.

Rachel Leiton has stated that unless it is in the policy or procedure manual the memo is only used for internal discussion and are pre-decisional. See paragraph on page 2.

All cases that used memos to deny the case are to go according to the letter.

Donna Hand Worker Advocate/ Authorized Representative





JUN 4 2013

Ms. Donna Hand
[REDACTED]
[REDACTED]

Dear Ms. Hand:

Re: Freedom of Information Act Request - Tracking Number 16213

Dear Ms. Hand:

This letter is in response to your April 27, 2013 Freedom of Information Act (FOIA) request which was assigned to the Division of Energy Employees Occupational Illness Compensation (DDEOIC) for May 1, 2013. Your correspondence was addressed to the Acting Secretary of Labor (with the Honorable Secretary of Labor M. Pamela Smith) and you were cited as the authorized representative for Mr. [REDACTED] who filed a claim for Benefits under Part B and Part E of the Energy Employees Occupational Illness Compensation Program Act (EEOICPA). This FOIA request has been assigned FOIA tracking number 16213. Please refer to this tracking number in any future correspondence relative to this FOIA request.

Your request contained seven specific questions. The first six enumerated questions will be responded to by separate correspondence as a DDEOIC National Office Comment Inquiry. Your enumerated question 7 will be handled as a FOIA request. Under FOIA, you requested the following: "Please send a copy of all memos with the date of effect that pertain to BOPF under Part E and processing respiratory illnesses under Part E."

It is the policy of DDEOIC to make records available to the public to the greatest extent possible, in keeping with the spirit of the FOIA, while at the same time protecting sensitive information. FOIA exemption 5, covering "Privileged information or information which would not be available by law to a party other than an agency in litigation with the agency," DDEOIC Policy Rule exemption policy which are developed through DDEOIC's deliberative processes are provided in the attached and are not intended to be final opinions or

and statements of agency policy". Accordingly, DEFOIC Policy teleconference notes are protected under the "pre-decisional deliberative process privilege" and are exempted in accordance with Exemption 5 under FOIA. In addition, attorneys in the Office of the Solicitor of Labor (SOL) provide legal advice and guidance concerning policy discussions during Policy teleconferences. These communications between SOL attorneys and DEFOIC staff are protected under the "attorney-client privilege" and are also exempted in accordance with Exemption 5 under FOIA.

DEFOIC Policy teleconference discussions are designed to encourage open and frank discussions between policy analysts, officials, SOL attorneys, and others on important matters of policy. DEFOIC Policy teleconference notes cover the policy questions submitted by DEFOIC district offices or the Final Adjudication Branch as well as responses from the DEFOIC National Office. Factual information presented in the questions and the National Office's policy responses are integrated in these Policy teleconference deliberative materials. Revealing the factual information in the questions would cause harm to DEFOIC's Policy teleconference deliberative process or would be tantamount to revealing DEFOIC's internal policy deliberations.

The pre-decisional deliberative process privilege protects the integrity of the DEFOIC deliberative process. Disclosure of DEFOIC Policy teleconference notes would have a "chilling effect" upon DEFOIC's internal deliberative process and would lead to premature disclosure of policy discussions which may or may not ever be finalized and issued as part of official statements of policy in the EEFOIC PA Procedure Manual. Similarly, release of DEFOIC Policy teleconference notes would cause much public confusion resulting from various policy deliberations, reasons and rationales which were addressed during the Policy teleconferences but not ultimately adopted as final decisions or official statements of DEFOIC policy published in the EEFOIC PA Procedure Manual.

Therefore, after careful consideration and balancing the FOIA policy to make records available to the public to the greatest extent possible, while at the same time protecting sensitive information, we conclude that the requested disclosure of all DEFOIC Policy teleconferences notes with the date of effect that pertains to BeLPI under Part I and protecting respiratory illnesses under Part I, would cause "foreseeable harm" to the integrity of the DEFOIC deliberative process as well as causing public confusion resulting from the premature disclosure of policy deliberations which were addressed during the Policy teleconferences but not ultimately adopted as final decisions or official statements of DEFOIC policy issued in the EEFOIC PA Procedure Manual.

There are no fees associated with this response. This letter will complete our action on your FOIA request.

¹ DEFOIC issues final statements of policy in the EEFOIC PA Procedure Manual, EEFOIC PA Bulletin, and EEFOIC PA Circular.

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Under FOIA, you may appeal this response to the Solicitor of Labor. You may file an appeal with the Solicitor of Labor within 90 days from the date of this letter. The appeal must state, in writing, the grounds for the appeal, including any supporting statement or arguments. The appeal should include a copy of your initial request and a copy of this letter. The appeal must be addressed to: Solicitor of Labor, Division of Management and Administrative Legal Services, U.S. Department of Labor, Room N-2426, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Alternatively, you may wish to fax your appeal to (202) 693-5538. If mailed, both the envelope and the letter of appeal itself should be clearly marked, "Freedom of Information Act Appeal". You may alternatively submit an appeal by email to privacy@doleta.gov. Appeals submitted to any other email address will not be accepted.

Sincerely,



Rachel P. Linton
Director, Division of Energy Employees
Occupational Illness Compensation

U.S. Department of Labor

Employment Standards Administration
Office of Workers' Compensation Programs
Division of Energy Employees Occupational
Illness Compensation
Washington, D.C. 20210

NU

pg 1/9

JUN - 4 2013

Ms. Donna Hand
[REDACTED]
[REDACTED]

Dear Ms. Hand:

Thank you for your April 27, 2013 facsimile sent to Acting Secretary of Labor Seth Harris, Solicitor of Labor M. Patricia Smith, and me. You wrote as the authorized representative for Ms. [REDACTED], who filed a claim for benefits under Part B and Part E of the Energy Employees Occupational Illness Compensation Program Act (EEOICPA). Your inquiry contained seven specific questions, and was forwarded to me for response.

Our records show that subsequent to my letter to you dated April 1, 2013, on April 23, 2013, the Final Adjudication Branch issued a final decision to deny Ms. [REDACTED]'s claim for chronic beryllium disease (CBD) and bronchitis under Part B and Part E of the EEOICPA. A copy of the final decision is attached.

Preliminarily, your facsimile indicates that your inquiry is in regard to a "phone memo on [REDACTED] case file [REDACTED]." It is my understanding that you are referring to a November 14, 2012 policy call note regarding the pre-employment diagnosis of a chronic respiratory disorder.

Below please find responses to your questions 1 through 6. Enumerated question 7 in your inquiry will be responded to in a separate correspondence as a Freedom of Information Act (FOIA) request.

Your initial question asks whether the [REDACTED] case was the basis for the November 14, 2012 policy call note. Ms. [REDACTED]'s case was the impetus for the policy call. The Jacksonville district office had sought out some clarification on the criteria necessary for establishing a diagnosis of CBD, and the November 14, 2012 policy call note provided the requested clarification. *the 6*

Regarding your question 2, the National Office does not, as a matter of policy, review the actual case file prior to taking part in a policy call and issuing the note from each policy call. These policy call notes provide informal policy guidance to our field staff regarding the adjudication of individual claims for benefits under the EEOICPA, and a full case file review is generally not necessary.

Your third question asks why Ms. [REDACTED] was not provided with a copy of the policy call note. As indicated above, the policy call notes provide informal policy guidance to our field staff. DEEOIC Policy teleconference notes, which are developed through DEEOIC's deliberative process, are pre-decisional in nature and are not intended to be final opinions or final statements of agency policy. In addition, attorneys in the Office of the Solicitor of Labor (SOL) provide legal advice and guidance concerning policy discussions during Policy teleconferences. These communications between SOL attorneys and DEEOIC staff are protected under the "attorney-client privilege" and are also exempted in accordance with Exemption 5 under FOIA.

In your fourth question, you inquire as to whether there are any policy call notes "addressing BeLPT under Part E?" There are certain policy call notes that include mention of both BeLPT and Part E. We would be glad to respond to a request for information such as this under a FOIA request. Please provide detailed information as to what information you are seeking, and we will respond accordingly.

Your fifth question appears to ask whether the November 14, 2012 policy call note is applicable to all claimants, and inquires as to the date when the policy call note became effective. As I have explained to you on previous occasions, policy call notes attempt to address a unique case adjudication issue, and do not alter or in any way modify the actual eligibility criteria in the statute. The November 14, 2012 policy call note would not apply to all claimants, as all claims involve individual fact patterns and medical scenarios, though there may be some aspects of the policy call note that may be of assistance in a particular claim. Policy call notes do not have an effective date, as they are nothing more than informal policy guidance.

In your sixth question, you ask for the statutory authority authorizing the Division of Energy Employees Occupational Illness Compensation to "issue memos with the effective [sic] of law?" As noted above, policy calls are merely informal policy guidance. They do not have the effect of law, and they do NOT alter or in any way modify the actual eligibility criteria in the statute.

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I trust this information is helpful. Should you or Ms. [REDACTED] have any additional questions, you may call the Jacksonville district office toll-free at (877) 336-4272.

Sincerely,

Rachel P. Leiton

Rachel P. Leiton
Director, Division of Energy Employees
Occupational Illness Compensation

Enclosure: April 23, 2013 FAB Final Decision

EXHIBIT No. 2

**(Email Regarding Criminal Violations For Knowingly and Willfully Violating 18 U.S.C
Section 1001)**

From: Gary Vander Boegh

Sent: Wednesday, July 17, 2013 6:09 PM

To: betts.carolina@dol.gov; mitten.raymond@dol.gov; Malcolm Nelson (nelson.malcolm@dol.gov); Bill.Campbell@usdoj.gov; Jack Kolar (john.kolar@usdoj.gov); Malcolm Nelson (nelson.malcolm@dol.gov); Rachel Leiton (Leiton.Rachel@dol.gov); Gary Steinberg (Steinberg.gary@dol.gov)

Cc: Michael Pape (Michael.Pape@mail.house.gov); Senator McConnell Chief of Staff Josh Holmes (josh_holmes@mcconnell.senate.gov); Jack Conway Kentucky Attorney General (jenkins@jackconway.org); Liz Natter (liz.natter@ag.ky.gov)

Subject: Status of Helen Featherston's Request of Reconsideration & Potential Violations of 18 U.S.C
Section 1001

Importance: High

Ms. Betts,

Attached please find the electronic copy of Mrs. Helen Featherston's request for reconsideration. A copy of the record file has been provided to Congressman Ed Whitfield that confirms the Department of Labor has been unequally treating Commonwealth Environmental Services claimants. If the DOL is continuing to utilize new procedures that were adopted within the "Unified Procedures Manual" by DOL OWCP Director Gary Steinberg, please

confirm. I simply need to know which procedures were used and if internal memos were the basis for the CES claims denials. Were the CES claims denied in violation of the administrative procedures act? Assuming you, Mr. Mitten, and Ms. Leiton are attorneys, it is my understanding that violations of 18 USC §1001 may result in imprisonment up to 5 years for falsification or concealing material facts. According to the WHIPP Program Queens College staff of Dr. Steven Markowitz, calcified granulomas may be associated with a healing process associated with Chronic Beryllium Disease. Was a memo issued by DOL that instructed claims examiners to no longer consider calcified granulomas as "consistent with" chronic beryllium disease under the Pre-93 CBD statutory Criteria?

<http://www.law.cornell.edu/uscode/text/18/1001>

18 USC § 1001 - STATEMENTS OR ENTRIES GENERALLY

(a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully—

(1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;

(2) makes any materially false, fictitious, or fraudulent statement or representation;

or

(3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry;

Disparate treatment of CES, LLC claimants in Western Ky. has been confirmed and shared with Congressman Ed Whitfield that demonstrates that PGDP/ CES claimants have been targeted for denial of their statutory compliant EEOICPA claims, while other claimants were approved who worked at the DOE facilities located in other states. This information has been provided to Senator Mitch McConnell and Congressman Whitfield at their request in advance of Senator McConnell's request for a Congressional Investigation into violations of federal laws meant to compensate and protect the health and safety of the nuclear workers in his jurisdiction.

Mrs. Featherston's claim for Pre- 93 CBD is overdue for approval based on the EEOICPA statutes, absent the internal memo's and procedures identified as being more strict than the U.S. Code for the EEOICPA (Reference Bringham vs DOE attached). A request for a favorable reconsideration is requested after addressing the above questions relating to the federal law.

With Respect,

Gary S. Vander Boegh

DOE Whistleblower/ Nuclear Worker Advocate/ EEOICPA Authorized Representative