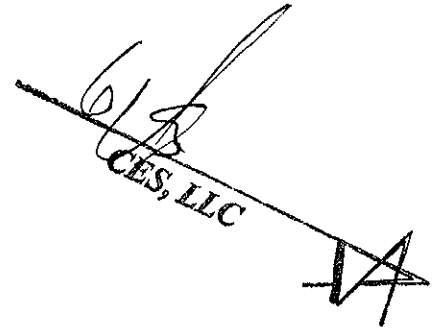


**ORIGINAL**

Gary Vander Boegh, Vice President  
Commonwealth Environmental Services, LLC  
4645 Village Square Drive, St. F  
Paducah, Kentucky 42001



August 11, 2009

U. S. Department of Labor, EEOICPA  
Final Adjudication Branch  
400 West Bay Street, Suite 63B  
Jacksonville, Florida 32202

Employee: William R. Wilson  
File No. [REDACTED] 6558

TO WHOM IT MAY CONCERN:

As authorized representative for William R. Wilson, I hereby object to the Final Decision rendered by the Department of Labor (DOL) by letter dated July 13, 2009 and request "Reconsideration" of Mr. Hall's Part B and E claim for Chronic Beryllium Disease (CBD). The DOL FAB Jacksonville, Florida office hearing representative Karen Cumberland has failed evaluate the claimant's records received by the Paducah Resource Center (PRC) on May 4, 2009.

In accordance with Energy Employee Occupational Illness Program Act (EEOICPA), the "Claimant" William R. Wilson has, in fact, met the Part B requirements established by Congress, as the evidence supports. Therefore, Mr. Wilson's EEOICPA Parts B and E claims for compensation should be affirmed by the DOL as confirmed by the following undisputed facts indicate:

**UNDISPUTED FACTS**

**<http://www.dol.gov/esa/owcp/energy/regs/compliance/progbenefits.htm>**

**1/ Division of Energy Employees Occupational Illness Compensation DEEOIC)Program Benefits**

Part B

**Compensation of \$150,000 and payment of medical expenses from the date a claim is filed is available to:**

- o Employees of the Department of Energy (DOE), its contractors or subcontractors, and atomic weapons employers with radiation-induced cancer if:
- o the employee developed cancer after working at a covered facility of the Department of Energy, its contractors and subcontractors; and
- o the employee's cancer is determined at least as likely as not related to that employment in accordance with guidelines issued by the Department of Health and Human Services, or

- the employee is determined to be a member of the Special Exposure Cohort (employees who worked at least 250 days before February 1, 1992, for the Department of Energy or its contractors or subcontractors at one or more of the three Gaseous Diffusion Plants located at Oak Ridge, TN, Paducah, KY or Portsmouth, OH or who were exposed to radiation related to certain underground nuclear tests at Amchitka, AK) and developed one of certain listed cancers

**Employees of the Department of Energy, its contractors and subcontractors, and designated beryllium vendors who worked at covered facilities where they were exposed to beryllium produced or processed for the Department of Energy who developed Chronic Beryllium Disease;** and

Employees of the Department of Energy or its contractors and subcontractors who worked at least 250 days during the mining of tunnels at underground nuclear weapons tests sites in Nevada or Alaska and who developed chronic silicosis.

2/ Claimant Attachment 1 clearly supports the fact that Mr. Wilson responded to DOL's request for additional information in a timely manner. However, the Jacksonville, Florida District Office Manager failed to direct Ms Towanda Billingsley to review Mr. Wilson's information submitted on May 4, 2009 and instead, returned the claimant's record file to the DOL FAB prior to her receipt of the requested information that was received by the Jacksonville District Office on May 6, 2009.

Reference: <http://commonwealthenvironmentalservices.com/documents.php?orderby=date>

3/ Claimant Attachment 2 include EXHIBITS A thru F submitted to the PRC on May 4, 2009, in support of Ms. Billingsley's request for additional information.

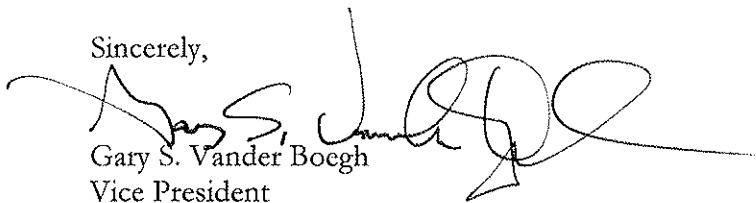
Reference: <http://commonwealthenvironmentalservices.com/documents.php?orderby=date>

4/ Claimant William R. Wilson's compensation is clearly supported by prior DOL No. 404985190 issued by Jacksonville, Florida District Office manager Jim Bibeault and claims examiner Latrica Alston on November 2, 2007.

In conclusion, Mr. William R. Wilson has, in fact, met his burden of proof and clearly qualifies for EEOICPA Part B compensation for CBD in the amount of \$150,000 and for Part E compensation in the amount of \$250, 000 (in addition to his medical benefits) as was paid to other claimants with the same condition. **In the interest of fairness and consistency, Mr. William R. Wilson's claim for compensation should not be treated disparately different than that of Mr. Terry G. Dennis.**

If you have any questions or comments, please don't hesitate to contact me at (270) 450-0850.

Sincerely,



Gary S. Vander Boegh  
Vice President

Commonwealth Environmental Services, LLC

**The Honorable Hilda Solis via facsimile (w/Claimant Attachments 1, 2, 3) 202-693-6111 & email)**

Secretary of Labor

U.S. Department of Labor

200 Constitution Avenue, NW

Room S-2018  
Washington, DC 20210

**Rachel Leiton via email (w/Claimant Attachments)**

**Senator Richard Durbin via facsimile (202) 228-0400**

**Senator Mitch McConnell via facsimile and email (202) 224-2499**

**Senator Jim Bunning via facsimile (202) 228-1373**

Senator Harry Reid via facsimile (202) 224-7327

Senator Ted Kennedy via facsimile (202) 224-2417

Congresswoman Sheila Jackson Lee via facsimile (202) 225-3317

Congressman Ed Whitfield via facsimile (202) 225-3547

Congressman Bart Stupak via facsimile (202) 225-4744

**ORIGINAL**

*Handwritten:* ✓ Out 5/4/09  
CES, LLC ✓

Gary Vander Boegh, Vice President  
Commonwealth Environmental Services, LLC  
7660 Old Hinkleville Rd.  
W. Paducah, Kentucky 42086

Date: May 3, 2009

U. S. Department of Labor, DEEOIC  
Division of Energy Employees Compensation  
Final Adjudication Branch  
400 West Bay Street, Suite 722  
Jacksonville, Florida 32202

**ATTENTION: Towanda Billingsley**

RE: File Number: [REDACTED] 6558  
Employee: William [REDACTED]

Ms. Billingsley,

Enclosed please find the following information regarding Mr. William [REDACTED] claim for Department of Labor (DOL) "Energy Employee Occupational Illness Compensation Act" (EEOICPA) Part B and E compensation and benefits for his established condition of "Chronic Beryllium Disease" (CBD).

Since Mr. [REDACTED] claim for CBD for Part B compensation was made after January 1, 1993, he is required by the EEOICPA to submit at least (1) or more of the "established criteria" (as stated in your letter dated March 11, 2009 – Exhibit A). Mr. [REDACTED] hereby provides the following additional information in response to the "established criteria", as outlined in your letter, that establishes his claim for compensation and benefits for his condition of CBD.

**CBD Established Criteria (per March 11, 2009 DOL letter)**

To establish CBD under Part B, Mr. [REDACTED] must submit one (1) or more of the following:

1/ "A lung biopsy showing granulomas or a lymphocytic process consistent with chronic beryllium disease."

Mr. [REDACTED] Response- As stated by the DOL claims examiner in "Exhibit A", Mr. [REDACTED] has met the established criteria by submitting "two abnormal beryllium lymphocyte proliferation tests."

CLAIMANT ATTACHMENT 1  
PAGE NO. 1 OF 3

RECEIVED  
Paducah Resource Center  
MAY 04 2009  
Transmitted to DOL DO  
*Copy KO*

2/ "A computerized axial tomography (CAT) scan showing changes consistent with chronic beryllium disease.

Mr. [REDACTED] Response – A computerized axial tomography (CAT) scan was performed by Gershom Lundberg, M.D. on 08-03-07. Per the CAT scan report, "Mr. [REDACTED] presents for a follow-up for bilateral lower lobe scarring from beryllium exposure" (Exhibit B). Dr. Gershom further states in his diagnostic consultation report, "A helical study was performed without intravenous contrast. Comparison is made with an exam dated 06-26-06. There is persistent mild lob scarring, showing some progression from last year. I see no pulmonary mass or pleural fluid and no adenopathy. There are benign right hilar calcifications and mediastinal calcifications.".....

3/ A pulmonary function study or exercise tolerance test showing pulmonary deficits consistent with chronic beryllium disease.

Mr. [REDACTED] Response -- On September 15, 2008, Keith E. Kelly, M.D. reported the following (Exhibit C):

.... "Chest CT, high resolution technique shows some diffusely increased interstitial markings without honeycombing. This may be due to chronic beryllium disease."

...."Based on the criteria for after January 1, 1993 he does have a history of abnormal beryllium lymphocyte proliferation test and a computerized V-scan showing changes consistent with chronic beryllium disease. While this is not diagnostic such as a biopsy would be, I think his syndrome fulfills the above criteria per the U.S. Department of Labor Form EE-7 dated April 2005.".....

In the DOL correspondence dated January 3, 2008 (Exhibit D), regarding Mr. [REDACTED] claim for Part E "permanent impairment rating", the DOL claims examiner Jean Lafontant, indicated, ..."I would first like to make you aware that our District Medical Consultant (DMC) has indicated that based on the medical evidence you submitted, it support that you (Mr. Wilson) have chronic beryllium disease (CBD).".....

On January 14, 2008, the "Respiratory Disease Clinic" indicated that "Mr. [REDACTED] pulmonary condition is unlikely to improve with or without medical treatment." The Paducah Resource Center submitted this information to the DOL District Office in Jacksonville, Florida on June 9, 2008 (Reference Exhibit E).

On September 22, 2008, the Paducah Resource center case worker Ms. Carolyn Hudson provided Mr. [REDACTED] September 15, 2008 medical report prepared by Keith Kelly M.D. to the DOL Jacksonville District Office

In conclusion, Department of Labor, Jacksonville District Office recently indicated, "throughout the course of operations, the potential for beryllium exposure existed at the

Paducah Gaseous Diffusion Plant, due to beryllium use, residual contamination and decontamination activities.” The evidence Mr. [REDACTED] has provided above clearly meets the established criteria for proving CBD and therefore qualifies him for Part B and E compensation and benefits. If the DOL Jacksonville District Office has any questions regarding the above, please don't hesitate to contact me at (270) 450-0850.

Sincerely,



Gary S. Vander Boegh  
"Authorized Representative"

Cc: Jim Bibeault DEEOIC by facsimile w/ Exhibits A thru F (904) 357- 4785

CLAIMANT ATTACHMENT 1  
PAGE NO. 3 OF 3

EXHIBIT A

U.S. DEPARTMENT OF LABOR

EMPLOYMENT STANDARDS ADMINISTRATION  
OFFICE OF WORKERS' COMPENSATION PROGRAMS  
DIVISION OF ENERGY EMPLOYEES' COMPENSATION  
400 West Bay Street, Suite 722  
JACKSONVILLE FL 32202  
PHONE: 1-(877)-336-4272 Toll Free or (904) 357-4705  
FAX: (904) 357-4704



March 11, 2009

Employee: William [REDACTED]  
Claim File Number: [REDACTED] 6558

William [REDACTED]  
[REDACTED]  
[REDACTED]

Dear Mr. Wilson:

This letter is in reference to your claim for Parts B & E benefits provided through the Energy Employees Occupational Illness Compensation Program Act.

You claimed that you developed chronic beryllium disease (CBD), as a result of your employment at the Paducah Gaseous Diffusion Plant in Paducah, Kentucky.

I have reviewed the evidence in file, and find that you previously submitted 2 abnormal beryllium lymphocyte proliferation tests (LPT), so there is no need to submit another LPT. There is additional medical evidence, dating from July 26, 2007 to September 6, 2007, with the latest diagnoses of bad basilar pulmonary fibrosis

An office visit report dated September 15, 2008, from Dr. Keith Kelly lists an impression of beryllium sensitivity and interstitial lung disease very possibly chronic beryllium disease.

This information alone is not sufficient. Please read the following information to submit for the claimed condition CBD for Part B and E.

Under Part B to establish CBD, there are different criteria depending on the date of diagnosis.

If a diagnosis of CBD was made on or after January 1, 1993, you must submit one (1) or more of the following:

- A lung biopsy showing granulomas or a lymphocytic process consistent with chronic beryllium disease
- A computerized axial tomography (CAT) scan showing changes consistent with chronic beryllium disease
- A pulmonary function study or exercise tolerance test showing pulmonary deficits consistent with chronic beryllium disease.

*For any test results, your physician must provide an opinion whether the findings are consistent with chronic beryllium disease.*

Under Part E to establish a diagnosis of CBD submit:

RECEIVED  
Paducah Resource Center

MAY 04 2009

Transmitted to DOL-DO

Copy KO

CLAIMANT ATTACHMENT 2

PAGE NO. 1 of 6

EXHIBIT B

CRAWFORD & LUNDBERG X-RAY CLINIC, P.S.C.

KEITH HOWARD CRAWFORD, M.D.

GERSHOM LUNDBERG, M.D.

BROADWAY PROFESSIONAL BLDG

2421 BROADWAY

PADUCAH, KENTUCKY 42001

TELEPHONE: (270) 343-8323

FAX: (270) 344-0539

RADIOLOGY

X-RAY DIAGNOSIS

BREAST EVALUATION

ULTRASONOGRAPHY

CT SCANNING

M.R.I. SCANNING

BONE DENSITY EVALUATION

OFFICE HOURS

Mon - Fri 9a

7:30 a.m. - 4:00 p.m.

DATE 08-03-2007

Patient William [REDACTED]

DOB 01-02-1925

Referring Doctor Keith Kelly, M.D.

Examination CT Scan Chest without contrast

Age 82

X-ray No. 28541

CT SCAN REPORT

History of Clinical Problem Mr. [REDACTED] presents for a follow-up for bilateral lower lobe scarring from beryllium exposure.

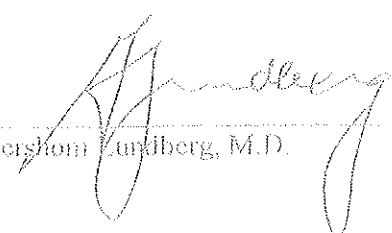
REPORT ON DIAGNOSTIC CONSULTATION

A helical study was performed without intravenous contrast. Comparison is made with an exam dated 06-26-06. There is persistent mild lower lobe scarring, showing some progression from last year. I see no pulmonary mass or pleural fluid and no adenopathy. There are benign right hilar calcifications and mediastinal calcifications. No acute inflammatory infiltrate. The heart is enlarged.

Impression: Mild progression of bibasilar fibrosis since last year. Otherwise no acute pathology in the chest.

GL/c

AW  
9/6/07

  
Gershom Lundberg, M.D.

CLAIMANT ATTACHMENT 2

PAGE NO. 2 of 6

RECEIVED  
Paducah Resource Center

MAY 04 2009

Transmitted to DOLDO

Copy 10



EXHIBIT C

9/15/08

WILLIAM [REDACTED] 703 KEK

PROBLEMS: 1. Interstitial lung disease, possibly chronic beryllium disease, patient declines biopsy. 2. Movement disorder not otherwise specified.

MEDICATIONS: MVI and Clonazepam

SUBJECTIVE: He follows up and is doing generally fairly well. He feels like his lung function is declining. He has some dyspnea with exertion. No acute complaints, no fevers, chills, or sweats, no increasing cough or sputum production. He had a CT of the chest at Crawford-Lundberg Clinic prior to this visit.

PHYSICAL EXAMINATION: HT: 70", WT: 145, BP: 132/80, Pulse: 60, Respirations: 16, SAT: 98% on RA. HEENT: Sclerae are white extraocular movements are intact. Oral mucosa is moist, naris are patent. Neck - Supple. Chest - Very faint basilar crackles. Cardiac - Regular normal S1 and S2. Abdomen - Soft, nontender, with positive bowel sounds. Extremities - No cyanosis, clubbing, or edema. Gait normal, ambulatory awake and alert.

LAB: Spirometry FEV1 113% predicted, FVC 108% predicted, total lung capacity 108% predicted, residual volume 138% predicted, diffusion capacity 136% predicted, MVV 118% predicted basically normal. Chest CT, high resolution technique shows some diffusely increased interstitial markings without honeycombing. This may be due to chronic beryllium disease.

IMPRESSION: 1. Beryllium sensitization 2. Interstitial lung disease very possibly chronic beryllium disease

PLAN: We discussed the results. Based on criteria for after January 1, 1993 he does have a history of abnormal beryllium lymphocyte proliferation test and a computerized V-scan showing changes consistent with chronic beryllium disease. While this is not diagnostic such as a biopsy would be, I think his syndrome fulfills the above criteria per the US Department of Labor Form EE-7 dated April 2005. I offered no other specific intervention currently. He will follow up in 6 months.

*[Signature]*  
Keith E. Kelly, MD

KEK/sdc

COPY: William [REDACTED]

RECEIVED  
Paducah Resource Center

RECEIVED  
Paducah Resource Center

SEP 22 2008

Transmitted to DOL/DO

CLAIMANT ATTACHMENT 2

MAY 04 2009

PAGE NO. 3 OF 6

Transmitted to DOL/DO

*Copy KE*

EXHIBIT D

U.S. Department of Labor

Employment Standards Administration  
Office Of Workers' Compensation Programs  
Division of Energy Employees' Compensation  
400 West Bay Street, Room 722  
Jacksonville, FL 32202  
Phone: (877) 336-4272 or (904) 357-4705  
Fax: (904) 357-4704



January 3, 2008

File Number: [REDACTED]-6558

William [REDACTED]  
[REDACTED]  
[REDACTED]

Dear Mr. [REDACTED]

I am writing to inform you that we are unable to make a determination on your claim for a permanent impairment rating for the condition of beryllium sensitivity.

*But first*, I would like to make you aware that our District Medical Consultant (DMC) has indicated that based on the medical evidence you submitted, it supports that you have chronic beryllium disease (CBD). Enclosed is copy of an EE-1, Claim for Benefits Under the Energy Employees Occupational Illness Compensation Program Act Form for you to fill out and submit to your local resource center. Your nearest resource center is located Paducah, KY. Their toll free number is 1-866-534-0599. Also, please submit any medical documentation that may diagnose you with CBD.

Regarding your beryllium sensitivity, in order to determine whether you have sustained a permanent impairment, the physician must conclude that your accepted condition is well-stabilized and unlikely to improve substantially with or without medical treatment; this is called maximum medical improvement or MMI.

The medical evidence shows your condition has not reached this state; therefore, we cannot determine your impairment rating at this time.

The DMC noted the following in his report:

1. The employee's beryllium sensitivity which was accepted based on blood tests, a positive (abnormal) test result is considered to represent immune reactivity to a material (beryllium). The test also shows immune reactivity to the other antigens used in the test to confirm normal immune responsiveness (phytohemagglutinin - a plant protein, Candida - a fungal protein, concanavalin a plant product or TTX - tetanus toxoid protein, depending on the test).
2. The DMC noted that the term beryllium sensitivity (without diagnoses of CBD) is a test result, not a medical condition. The AMA Guides state that an impairment is "a loss, loss of use or derangement of any body part, organ system, or organ function" and "a medical impairment can develop from an illness or injury."

RECEIVED  
RECEIVED  
Paducah Resource Center JUN 03 2008

MAY 04 2009  
Transmitted to DOI-DO

CLAIMANT ATTACHMENT 2

PAGE NO. 4 of 6

Copy to

EXHIBIT E

RESPIRATORY DISEASE CLINIC

JEFFREY S. CLARKE, M.D.  
STATE LIC. NO. 22654  
DEA: AC098716  
WILLIAM H. CULBERTSON, M.D.  
STATE LIC. NO. 21277  
DEA: AC131535

1920 BROADWAY  
PADUCAH, KENTUCKY 42001  
PHONE (270) 512-3617

WILLIAM H. BERWELL, M.D.  
STATE LIC. NO. 19504  
DEA: AB9250353  
KEITH E. KELLY, M.D.  
STATE LIC. NO. 30598  
DEA: BR3321547

FOR inhalation [redacted] AGE \_\_\_\_\_  
R ADDRESS \_\_\_\_\_ DATE 1-2-25 1/14/08

Mr [redacted] pulmonary  
condition is relatively to  
improve with or without  
medical treatment

RECEIVED  
Paducah Resource Center  
JUN 08 2008

DISREGARD UNLESS CHECKED  
LABEL CONTENTS  \_\_\_\_\_  
GENERIC EQUIVALENT MAY BE USED  \_\_\_\_\_  
REFILL \_\_\_\_\_ TIMES

Transmitted to DOLDO  
M.D.

CLAIMANT ATTACHMENT 2  
PAGE NO. 5 of 6

RECEIVED  
Paducah Resource Center  
MAY 04 2009  
Transmitted to DOLDO  
Copy Ka

EXHIBIT F

ENERGY EMPLOYEES  
COMPENSATION RESOURCE CENTER

DATE: September 22, 2008  
TO: Mr. William [REDACTED]  
FROM: Carolyn Hudson, Case Worker *CH*  
Energy Employees Compensation Resource Center  
Paducah, KY  
RE: Returned Documentation

Enclosed is your copy of the documentation that has been forwarded to the Department of Labor. Please maintain a file of the documentation returned to you, as the Resource Center is unable to store records in our office once receipt of the records has been confirmed by the Department of Labor.

If I can be of any assistance, or if you have any questions, please do not hesitate to call the toll free number 1-866-534-0599.

Enclosure:

Medical Record from Dr. Keith Kelly's Office  
Diagnosis of probably Chronic Beryllium Disease

125 MEMORIAL DRIVE  
PADUCAH, KY 42001  
Phone: 270-534-0599 and 1-866-534-0599 (toll free) Fax: 270-534-8723  
Paducah.center@erohio.com

RECEIVED  
Paducah Resource Center

MAY 04 2009

Transmitted to DOLDO

CLAIMANT ATTACHMENT 2

PAGE NO. 6086

copy KO

**U.S. Department of Labor**

Employment Standards Administration  
 Office Of Workers' Compensation Programs  
 Division of Energy Employees' Compensation  
 400 West Bay Street, Room 722  
 Jacksonville, FL 32202  
 Phone: (877) 336-4272 or (904) 357-4705  
 Fax: (904) 357-4704



**COVERED EMPLOYEE:** Terry G. Dennis  
**CLAIMANT:** Terry G. Dennis  
**FILE NUMBER:** 404-98-5190  
**DATE OF FILING:** December 7, 2005  
**DATE OF ISSUANCE:** November 2, 2007

**NOTICE OF RECOMMENDED DECISION**

This is a Recommended Decision of the District Office concerning your claim for compensation under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA or the Act). The District Office recommends an acceptance of your claim for chronic beryllium disease.

A determination regarding your claim for chronic obstructive pulmonary disease (COPD), pulmonary fibrosis, and impairment benefits, under Part E of the EEOICPA, is being deferred pending further development.

**STATEMENT OF THE CASE**

On December 7, 2005, Terry G. Dennis, hereinafter referred to as the employee filed a claim for benefits (Form EE-1) under the EEOICPA indicating he developed beryllium sensitivity as a result of his employment at a Department of Energy (DOE) facility.

On January 3, 2007, a final decision (Docket #10019892-2007) was issued to accept the claim for beryllium sensitivity under the EEOICPA finding that the employee was exposed to beryllium in the performance of his duties with J.S. Alberici Contractors at the Paducah Gaseous Diffusion Plant in Paducah, KY from approximately 1998 to 1999.

On October 18, 2007, the employee filed a new claim seeking benefits pursuant to the EEOICPA. The employee claimed he developed chronic beryllium disease (CBD) as a result of his employment at a Department of Energy (DOE) facility.

Medical evidence submitted to support the claimed condition includes an abnormal Beryllium Lymphocyte Proliferation Test (LPT) dated September 21, 2005; a chest CT, dated March 5, 2007, showing severe chronic interstitial lung changes with honeycombing compatible with interstitial pulmonary fibrosis; pulmonary function tests (PFT), dated from August 16, 2007, showing severe obstructive and restrictive lung physiology that does not improve with bronchodilators; and a medical note, dated September 24, 2007, from William H. Bedwell, M.D.,

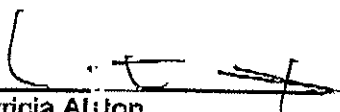
CLAIMANT ATTACHMENT 3  
 PAGE NO. 102


The employee was diagnosed with a covered beryllium illness, as that term is defined under 42 U.S.C. § 7384l(13)(A).

The employee is entitled to compensation in the amount of \$150,000 pursuant to 42 U. S. C. §7384s(a)(1).

A determination under Part B that a DOE contractor employee is entitled to compensation under that Part for an occupational illness shall be treated for the purposes of Part E as a determination that the employee contracted that illness through exposure at the DOE facility in accordance with 42 U.S.C. § 7385s-4(a).

The employee is entitled to medical benefits for the treatment of chronic beryllium disease effective December 7, 2005 and continuing as provided for under 42 U.S.C. §7384t and 42 U.S.C. §7385s-8.

  
\_\_\_\_\_  
Latricia Alston  
Claims Examiner

  
\_\_\_\_\_  
Donna Apte  
Senior Claims Examiner