

# Fax Cover Sheet

To: , From: Gary S. Vander Boegh  
Hon. Secretary of Labor  
Hilda Solis, Jim Bibeault

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Fax: (202) 693-1465 Date: 11-23-10  
(904) 357-4704  
(202) 693-6111

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Phone: (270) 450-0850 Pages: \_\_\_ Pages including the Cover Sheet

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Re: Minnie Donald CC: Attention Madam Solis, Jim Bibeault  
File No. XXXXX7985 and David Miller

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Urgent     For Review     Please Comment     Please Reply     Please Recycle

**Comments:**

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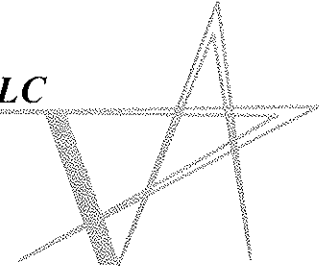
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**COMMONWEALTH ENVIRONMENTAL SERVICES, LLC**

"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

November 23, 2010

U. S. Department of Labor,  
Frances Perkins Building, 200 Constitution Ave., NW  
Room S-2018  
Washington, DC 20210  
Facsimile (904) 357-4704

Attention: Rachel Leiton, James Bibeault & Madam Secretary Hilda Solis

Employee: Minnie Donald  
File Number: [REDACTED]

Dear Ms. Leiton, Mr. Bibeault and Madam Solis,

As "Authorized Representative" (AR) for claimant/ employee, Minnie Donald, I hereby submit the attached EE-1 form for Chronic Beryllium Disease (CBD) based on statutory requirements 42 USC § 73841 (13) (B) as follows:

(B) For diagnoses before January 1, 1993, the presence of—

(i) occupational or environmental history, or epidemiologic evidence of beryllium exposure; and

(iii) any three of the following criteria:

**(I) Characteristic chest radiographic (or computed tomography (CT)) abnormalities.**

**(II) Restrictive or obstructive lung physiology testing or diffusing lung capacity defect.**

(III) Lung pathology consistent with chronic beryllium disease.

(IV) Clinical course consistent with a chronic respiratory disorder.

(V) Immunologic tests showing beryllium sensitivity (skin patch test or beryllium blood test preferred).

The Department of Labor has further stated, "For beryllium disease prior to January 1, 1993, a specific diagnosis of CBD IS NOT REQUIRED (emphasis added.)"....

### **Evidence Of Minnie Donald Diagnosed "Lung Abnormality" in 1992 (Before January 1, 1993)**

The Paducah Gaseous Diffusion Plant was a DOE facility from 1952 to July 28, 1998 and July 29, 1998 to present (remediation) where radioactive and beryllium material were present, according to the Department of Energy Office of Worker Advocacy Facility List (<http://www.hss.energy.gov/HealthSafety/FWSP/Advocacy/faclist/findfacility.cfm>). Per Chapter 2-700.4 (September 2004) of the Federal (EEOICPA) Procedure Manual, "***To determine whether to use the Pre or Post 1993 CBD criteria, the medical evidence must demonstrate that the employee was either treated for, tested or diagnosed with Chronic Bronchitis. If the earliest dated document is prior to January 1, 1993, the pre-1993 CBD criteria may be used.*** Once it is established that the employee had a chronic respiratory disorder prior to 1993, **the CE is not limited to use of medical reports prior to 1993 to meet the three of five criteria.**"

Minnie Donald provides the following Claimant Attachments that consist of her treatment for acute and chronic Bronchitis (COPD):

1/ CA-001 - On September 24, 1992, "Dr. William H. Culbertson assessed Minnie Donald with bronchitis..... Claimant Attachment 001, page 1 of 6. On January 12, 1993 "Dr. William H. Culbertson diagnosed Minnie Donald with upper respiratory disease..... Claimant attachment 001 page 2 of 6. On June 7, 1994 "Dr. William H. Culbertson assessed Minnie Donald with acute and chronic bronchitis...Claimant attachment 001 page 3 of 6. On October 17, 1996 " Dr. William H. Culbertson stated she does have Chronic Bronchitis..... Claimant attachment 001 page 4 of 6. On September 22, 1999 "Dr. William H. Culbertson assessed Minnie Donald with Sinobronchial syndrome in a patient with chronic bronchitis..... Claimant attachment 001 page 5 of 6. On January 26, 1998 "Dr. William H. Culbertson assessed Minnie Donald with recurrent bronchitis..... Claimant attachment 001 page 6 of 6.

**Conclusion: Compliance pursuit with § 7384L(13)(B), Criteria's I, IV.**

2/ CA-002 – Pulmonary Function Test Results indicating, "Severe restrictive ventilator defect. This is indicated by the findings of a severely reduced forced vital capacity."

**Conclusion: Compliance pursuit with § 7384L(13)(B), Criteria's II.**

3/ CA-003 - "Memorandum from DEEOICP Director Peter Turcic" dated 8/25/05 regarding casual relationship between respiratory disorders and CBD.

**Conclusion: Compliance pursuit with § 7384L(13)(B), Criteria's I, II, & IV**

4/ CA-004 - Two prior EEOICP CBD case decisions that support and are consistent with evidence provided by Ms. Minnie Donald for her CBD claim. Case #1 - Notice of Final Decision and Remand Order dated October 15, 2004, Docket Number 19516-2004 and Case No. 2 - Notice of Final Decision dated September 13, 2004, Docket Numbers 59062-2004;59096-2004;59097-2004; and 59098-2004.

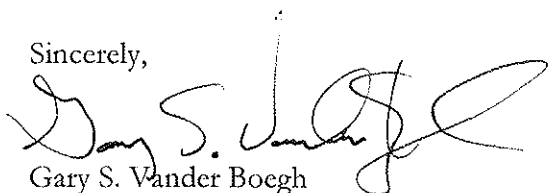
**Conclusion: Compliance pursuit with § 7384L(13)(B), Criteria's I, II, & IV**

**Request for Approval of Part B and Part E Compensation and Medical Benefits for Chronic Beryllium Disease (CBD)**

Based on the above medical evidence, Minnie Donald has met her statutory "burden of proof" for EEOICPA Part B Compensation in the amount of \$150,000 and EEOICPA Part E compensation based on the whole body impairment established by a physician of her choice Dr. Craig Uejo not to exceed \$250,000, per the statutory requirements USC § 7384l (13) (B). **More importantly, Minnie Donald is entitled to medical benefits for his "statutorily established" illness of Chronic Beryllium Disease, that includes all consequential illnesses related to his CBD per the Peter Turcic memorandum regarding "Chronic Pulmonary Disease", dated 8/25/2005.**

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 by facsimile (202) 693-6111

U.S. Department of Labor  
200 Constitution Avenue, NW  
Room S-2018  
Washington, DC 20210

Malcolm Nelson, EEOICP Ombudsman (by email and facsimile)

**Claim for Benefits Under the Energy Employees Occupational Illness Compensation Program Act**

**U.S. Department of Labor**  
Employment Standards Administration  
Office of Workers' Compensation Programs



**Note:** Provide all information requested below. Do not write in the shaded areas. OMB Number: 1215-0197  
Expiration Date: 08/31/2010

**Employee Information** (Please Print Clearly)

<b>1. Name</b> (Last, First, Middle Initial) [Redacted]		<b>2. Social Security Number</b> [Redacted]	
<b>3. Date of Birth</b> [Redacted] / [Redacted] / [Redacted] Month Day Year		<b>4. Sex</b> <input type="checkbox"/> Male <input checked="" type="checkbox"/> Female	
<b>5. Dependents</b> <input type="checkbox"/> Spouse <input type="checkbox"/> Children <input type="checkbox"/> Other:		<b>6. Address</b> (Street, Apt. #, P.O. Box) [Redacted] (City, State, ZIP Code) [Redacted]	
<b>7. Telephone Number(s)</b> a. Home: [Redacted]		b. Other: ( ) -	

**8. Identify the Diagnosed Condition(s) Being Claimed as Work-Related** (check box and list specific diagnosis)

	9. Date of Diagnosis		
	Month	Day	Year
<input type="checkbox"/> <b>Cancer</b> (List Specific Diagnosis Below)			
a.			
b.			
c.			
<input type="checkbox"/> <b>Beryllium Sensitivity</b>			
<input checked="" type="checkbox"/> <b>Chronic Beryllium Disease (CBD)</b>	01	10	1992
<input type="checkbox"/> <b>Chronic Silicosis</b>			
<input type="checkbox"/> <b>Other Work-Related Condition(s) due to exposure to toxic substances or radiation</b> (List Specific Diagnosis Below)			
a.			
b.			
c.			

**Awards and Other Information**

10. Did you work at a location designated as a Special Exposure Cohort (SEC)?	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
11. Have you filed a lawsuit seeking either money or medical coverage for the above claimed condition(s)?	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
12. Have you filed any workers' compensation claims in connection with the above claimed condition(s)?	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
13. Have you or another person received a settlement or other award in connection with a lawsuit or workers' compensation claim for the above claimed condition(s)?	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
14. Have you either pled guilty or been convicted of any charges connected with an application for or receipt of federal or state workers' compensation?	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
15. Have you applied for an award under Section 5 of the Radiation Exposure Compensation Act (RECA)?	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
<b>If yes, provide RECA Claim #:</b> [Redacted]	
16. Have you applied for an award under Section 4 of the Radiation Exposure Compensation Act (RECA)?	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO

**Employee Declaration**

Any person who knowingly makes any false statement, misrepresentation, concealment of fact, or any other act of fraud to obtain compensation as provided under EEOICPA or who knowingly accepts compensation to which that person is not entitled is subject to civil or administrative remedies as well as felony criminal prosecution and may, under appropriate criminal provisions, be punished by a fine or imprisonment or both. Any change to the information provided on this form once it is submitted must be reported immediately to the district office responsible for the administration of the claim. I hereby make a claim for benefits under EEOICPA and affirm that the information I have provided on this form is true. If applicable, I authorize the Department of Justice to release any requested information, including information related to my RECA claim, to the U.S. Department of Labor, Office of Workers' Compensation Programs (OWCP). Furthermore, I authorize any physician or hospital (or any other person, institution, corporation, or government agency, including the Social Security Administration) to furnish any desired information to the U.S. Department of Labor, Office of Workers' Compensation Programs.

Minnie Donald  
Employee Signature

09/03/2010  
Date

**Resource Center Date Stamp**

[Redacted]

*[Handwritten Signature]*

Respiratory Disease Clinic

1920 Broadway,  
Paducah, Kentucky 42001  
Phone (502) 442-3647

Yaser Jaafar, M.D.  
William H. Culbertson, M.D.  
Jeffrey S. Clarke, M.D.

HISTORY AND PHYSICAL  
MINNIE DONALD  
SEPTEMBER 24, 1992

26517

HISTORY: This is a patient who has had problems with recurrent rhinitis symptoms with conjunctivitis and cough with congestion. She has taken Seldane in the past with some improvement. She has had symptoms off and over the past several years and is now here for further evaluation to R/C allergic rhinitis.

PAST MEDICAL HISTORY: She is not allergic to any medications. She has tubal ligation in the past. She is a nonsmoker. She is divorced.

FAMILY HISTORY: Myocardial infarction in her father, otherwise unremarkable.

PHYSICAL EXAMINATION: Height, 56. Weight, 192. Blood Pressure, 122/84  
Pulse, 80. Temperature, 98.4.

HEAD AND NECK: Reveals no palpable adenopathy, JVD, or carotid bruits. She does have some swelling of her conjunctiva and has nasal erythema.

CHEST: Reveals lungs to be clear to auscultation and percussion.

CARDIAC: Reveals no murmurs or gallops.

ABDOMEN: Soft, without masses.

NEUROLOGICAL: Reveals no focal deficits.

LAB DATA: Scratch testing was performed in the office with the results showing sensitivities as recorded.

ASSESSMENT: Allergic rhinitis and bronchitis.

PLAN: 1. She is to start desensitization schedule. 2. She will take Hismanal 10 mg qd prn allergy symptoms. 3. Return to see me in six months to assure that she is responding to the above measures.

CLAIMANT ATTACHMENT 001

PAGE NO. 1 of 6

RECEIVED  
Paducah Resource Center

DEC 15 2009

Transmitted to DOL-DO

*[Handwritten Signature]*

01 JUN 92

STATE	SOCIAL SECURITY NO.	
WIS	EMPLOYEE NO. 031572	CHART
LAST NAME DONALD,		INITIALS M.A.
SEX	GROUP	BIRTH DATE
		AGE

CLINICAL RECORD

7/10/92 S. Here to have optimal results read - 1029/P  
 P. RW  
 O. Hayes, M.D.

11/17/92 S. Pt. c/o sore throat, sneezing, sinus  
 11/30/92 drainage.  
 O. T 98. & BP 116/66 RA sitting P100  
 A. Throat sl. reddened, & swelling  
 of epiglottis.  
 P. R. Tylenol q 4h prn  
 Sig-N-since prn  
 Chloraseptic lozenges q 2h prn  
 Pt. advised to return to Med. Dept.  
 if symptoms persist or worsen  
 P.W. J. Hutchings

1-12-93 S. Pt. states he has sore throat, cough  
 12/13/P and nasal drg. States he's  
 noticed some acne on face.  
 Symptoms started yesterday.  
 Denies fever. Pt. is treated by  
 Dr. Culbertson for allergies &  
 allergy inj's. Last saw Dr. Cul-  
 bertson on 1-4-93. Second inj. but  
 did not actually see me.

O. 4-99.0

A. URT symptoms

P. Will have me teach Pt. exampt.

(1) Atopic Hx.

(2) HENT w/ & x of PND.

(3) URT

(4) P. Polonium D was directed

(5) Gently lozenges - P. 2 lozenges  
 inserted 3-25m flow 4h.

UPPER RESPIRATORY DISEASE  
 OCS

CLAIMANT ATTACHMENT 001

PAGE NO. 2 OF 10

10/26/92  
11/19/92

EES 400mg qid x 10 days. Payless MT sore throat. Congest.

10/26/92 - Sulfacetamide i drop q=12 - PRN infection Payl.

11/19/92  
Ceclor T Tid x 10 days. Payless MT

26517WHC

JUNE 7, 1993.

SUBJECTIVE: She has been having problems with allergies still.  
OBJECTIVE: WT 196; BP 120/80; Pulse 78.  
ASSESSMENT: Chronic allergies.  
PLAN: Continue allergy shots. Take Claritin 10 mg qd prn allergy symptom

6-21-93  
Ceclor 250 Tid x 10 days Payless MT.

11/19/93

26517WHC

JUNE 7, 1994

SUBJECTIVE: She has been having problems with left pleuritic pain at times. She has also had cough and congestion.  
OBJECTIVE: WT 201. BP 120/88. She has diminished breath sounds with some scattered rhonchi. She is having left pleuritic pain but her CX shows no evidence of active infiltrates.  
ASSESSMENT: Acute and chronic bronchitis.  
PLAN: She is to take Organidin Elixir 1 tsp qid x 10 days because of the congestion. I gave her Ceclor to take for 10 days because of the cough productive of mucoid sputum.

10/3/94 Ceclor 250 mg TID x 10d.

Midtown

3-7-95

EES 400 qid x 10 days.

Medical Cesso

September 11, 1995

26517WHC

The patient called wanting medicine for bronchitis. EES 400mg qid x 10 days was called to Medical Associates.

CLAIMANT ATTACHMENT 001

PAGE NO. 3 OF 6



PROGRESS NOTES  
WINNIE DONALD  
12/19/95

26517WUIC

**SUBJECTIVE:** She has been having problems with a sore throat and some increasing throat congestion.  
**OBJECTIVE:** WT 210. BP 140/88. She does have some mild redness of the posterior pharynx and glottis. Her chest is clear.  
**ASSESSMENT:** Pharyngitis.  
**PLAN:** I gave her samples of Ceftin 250 bid for 10 days. Her chest is clear. She did not have other acute problems today.

DECEMBER 29, 1995  
c/o sore throat, coughing, ears itching, and runny nose. Pt. has taken Ceftin 250 bid x 10 days. Cipro 500 bid x 10 days. Pt. has taken Ceftin Med. Assoc.

May 15, 1996

The patient called stating she had a bad chest cold, coughing up yellow and wanting medicine.  
Plan: Cipro 500mg bid x 10 days was called to Medical Associates.

May 24, 1996

The patient called stating she has a chest congestion with yellow and has one tablet of Cipro left and would like to change.  
Plan: Ceclor 250mg tid x 10 days was called to Medical Associates.

September 23, 1996

The patient called with complaints of bronchitis and low grade temperature, chills.  
Ceclor 250mg tid x 10 days called to Medical Associates.

September 30, 1996

The patient called stating she has been taking Ceclor 250mg for a week and has not improved while on this, still has productive cough, fever, chills.  
Cedax 400mg i qd x 10 days called to Medical Associates.

PROGRESS NOTES  
MINNIE DONALD  
OCTOBER 17, 1996

26517 WUIC

**SUBJECTIVE:** She has been having problems with cough and congestion. She has taken several antibiotics to no avail and continues to have a low grade fever. She has also been found to have evidence of anemia for which she is seeing Dr. Bassi.  
**OBJECTIVE:** WT, 201. BP, 140/82. Her chest was relatively clear. She does have diminished breath sounds at the bases bilaterally. A CXR was obtained in the office today showing no evidence of pneumonia. She does have chronic bronchitis however.  
**ASSESSMENT:** Persistent fever in a patient with chronic and acute bronchitis.  
**PLAN:** She is to take Floxin 400 mg bid x 10 days. Continue all other therapy the same.

1-17-97

No Show mailed 1-22-97

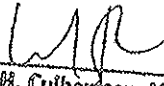
CLAIMANT ATTACHMENT 001  
PAGE NO. 4 OF 6

PROGRESS NOTES  
MINNIE DONALD  
09/22/99

26517WNC

**SUBJECTIVE:** She has been having problems with sinobronchial symptoms. She has been treated with Cefdin. She has also been taking sinus decongestants periodically.  
**OBJECTIVE:** WEIGHT: 219  
BLOOD PRESSURE: 138/88  
PULSE: 112  
**HEENT:** No palpable adenopathy, JVD, or carotid bruits. Some nasal erythema.  
**CHEST:** The lungs are clear to auscultation and percussion. No rhonchi, rales, or wheezes.  
**CARDIAC:** No murmurs or gallops.  
**ABDOMEN:** Soft. No masses are palpated.  
**EXTREMITIES:** No clubbing, cyanosis, or edema.  
**NEUROLOGICAL:** No focal deficits.  
**LAB DATA:** A CXR was not obtained in the office today.  
**ASSESSMENT:** Sinobronchial syndrome in a patient with chronic bronchitis.  
**PLAN:** 1. I gave her Depo-Medrol 40 IM. 2. She is to take Cipro 500 mg bid x10 days because she had just completed a course of Cefdin.

Rm<sup>c</sup>  
WHC/mt


  
William H. Culbertson, M.D.

PROGRESS NOTES  
MINNIE DONALD  
12/20/99

26517WNC

**SUBJECTIVE:** She has been having problems with sinus type congestion and irritation over the past several days. She has had some dark drainage and has been coughing up secretions as well.  
**OBJECTIVE:** WEIGHT: 221  
BLOOD PRESSURE: 120/88  
PULSE: 88  
**HEENT:** No palpable adenopathy, JVD, or carotid bruits. Some redness of the posterior nasal pharynx.  
**CHEST:** The lungs are clear to auscultation and percussion. No rhonchi, rales, or wheezes.  
**CARDIAC:** No murmurs or gallops.  
**ABDOMEN:** Soft. No masses are palpated.  
**EXTREMITIES:** No clubbing, cyanosis, or edema.  
**NEUROLOGICAL:** No focal deficits.  
**LAB DATA:** A CXR was not obtained in the office today.  
**ASSESSMENT:** Sinobronchial syndrome in a patient with chronic bronchitis.  
**PLAN:** 1. She is to have Omnicef 600 mg qd x10 days. I gave her samples. 2. Return to see me in 3-4 months, sooner if symptoms warrant.

Rm<sup>c</sup>  
WHC/mt

  
William H. Culbertson, M.D.

CLAIMANT ATTACHMENT 001  
PAGE NO. 5 of 6

01/26/98

26517WHC

MINNIE DONALD

SUBJECTIVE: I have not seen her in several years. Recently, she has been having problems with cough, congestion, and some increasing dyspnea. She just finished a course of Floxin. She has taken Floxin repeatedly in the past. She has not had a CXR obtained in more than a year. She also has never had the pneumococcal vaccination. I have seen her off and on over the years because of allergies and recurrent bronchitis.

OBJECTIVE: WT 216. BP 164/100. Pulse 88.

HEENT: No palpable adenopathy. She does have redness of the posterior pharynx.

CHEST: Diminished breath sounds over the lower lobes posteriorly. Otherwise, lungs are clear.

CARDIAC: No murmurs or gallops.

ABDOMEN: Soft.

EXTREMITIES: No clubbing or cyanosis.

LAB DATA: A CXR was obtained in the office today showing no evidence of pneumonia or infiltrates. She has no mass lesions. The heart size is normal.

ASSESSMENT: Recurrent bronchitis in a patient who has been treated with antibiotics without improvement.

PLAN: Pneumovax today. We also changed her antibiotic to Ceftin 250 mg bid x10 days. She is to call if symptoms worsen. Hopefully the pneumovax will give her some protection in the future.

WHC/rt

*WHC*

CLAIMANT ATTACHMENT 001

PAGE NO. 0026

# Pulmonary Function Report

Bradley T. Rankin, M.D.

Screener Report

Patient Information		
Name: DONALD, MINNIE	ID: 09287	Birthdate: [REDACTED]
Height at test (in): 66.0	Sex: Female	Smoking history (pk-yrs):
Weight at test (lb):	Age at test: 63	Predicted set: Hankinson (NHANES III)

Comments:

Diagnosis:

Interpretation
SEVERE RESTRICTIVE VENTILATORY DEFECT. This is indicated by the finding of a severely reduced forced vital capacity (FVC). The finding of a disproportionately reduced forced expiratory flow during the middle half of exhalation (FEF 25-75) suggests the possibility of a SUPERIMPOSED EARLY OBSTRUCTIVE PULMONARY IMPAIRMENT. This interpretation is valid only upon physician review and signature.

Site: Multispiro

Physician: Bradley Rankin, MD

Technician: TAMMY

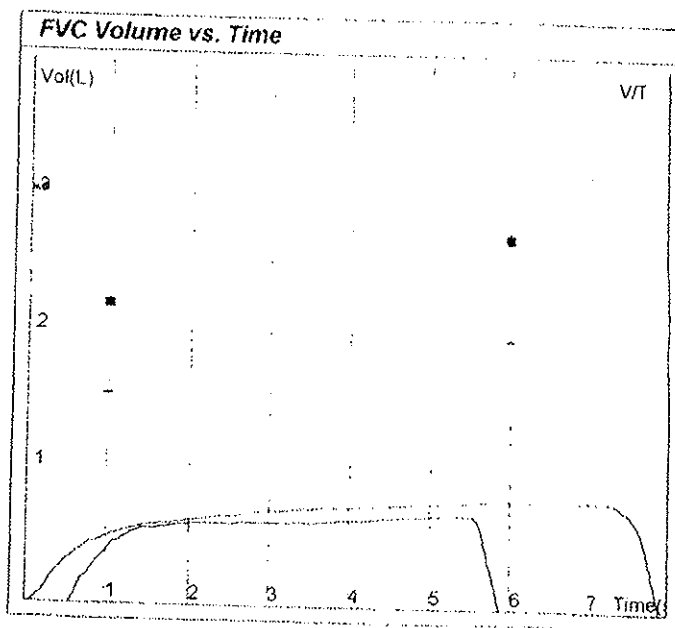
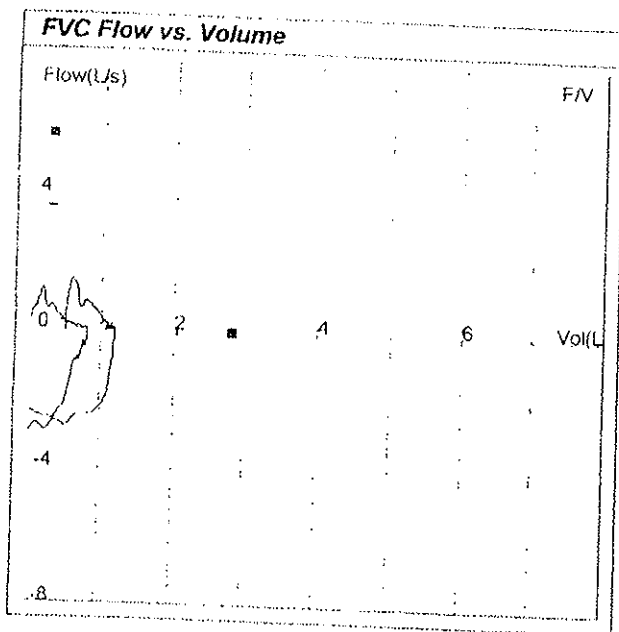
Effort protocol: ATS 1987

Test date/time: 06/16/09 11:00:44 AM

Number of efforts performed: 2

Results							
Result	Pred	Best	%Prd	Cons	%Prd		%Prd
FVC (L)	2.81	0.77	27%	0.64	23%	---	---
FEV1 (L)	2.20	0.53	24%	0.58	25%	---	---
FEV1/FVC	0.79	0.69	87%	0.88	111%	---	---
FEF25-75% (L/s)	2.10	0.35	16%	0.66	31%	---	---
PEFR (L/s)	5.73	1.22	21%	1.51	26%	---	---
Vext %	---	6.79	---	3.13	---	---	---

Test comments:



CLAIMANT ATTACHMENT 002

PAGE NO. 181

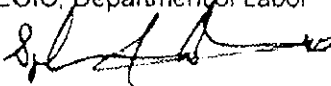
Judy Vander Boegh

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**From:** "Saved by Windows Internet Explorer 7"  
**Sent:** Wednesday, November 25, 2009 8:02 AM  
**Subject:** Chapter 2-1000 Exhibit 1

Memorandum from DEEOIC Medical Director  
Regarding Causal Relationship Between  
Established CBD and Other Respiratory Disorders

# Memorandum

**Date:** 08/25/2005  
**To:** Peter Turcic, Director of DEEOIC, Department of Labor  
**From:** Sylvie I. Cohen, MD, MPH   
**RE:** Chronic Pulmonary Diseases

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This memo is to address the rationale between the accepted medical condition under part B of the program for Chronic Beryllium Disease (CBD) and its contribution and aggravation of other chronic pulmonary diseases

CBD is considered to be a disease that is involved with the destruction of viable pulmonary tissue that normally aides an individual in the process of gas exchange and blood oxygenation

There are other chronic pulmonary diseases that are involved with lung tissue destruction or replacement that for the purpose of this memo we shall call "Other Chronic Pulmonary Diseases." Diseases that should be considered as members of this set are: asbestosis, silicosis, Chronic Obstructive Pulmonary Disease (COPD), emphysema, and pulmonary fibrosis

Since both CBD and Other Chronic Pulmonary Diseases share in the destruction and or replacement of viable lung tissue, it can be concluded that the presence of CBD contributed or aggravated one of the illnesses named in the list of Other Chronic Pulmonary Diseases which led to an individual's death

CLAIMANT ATTACHMENT 003

PAGE NO. 1 of 1

①

U.S. DEPARTMENT OF LABOR

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



HE HAS NO ABNORMAL BLOOD TEST  
IF FACT IT SAYS NOTHING ABOUT A BLOOD TEST

EMPLOYEE:

[Name Deleted]

AND HE DIDN'T FILE

CLAIMANT:

[Name Deleted]

FOR C.B.D

FILE NUMBER:



[Number Deleted]

+ HE WAS NOT

DOCKET NUMBER:

19516-2004

DIAGNOSED WITH

DECISION DATE:

October 15, 2004

C.B.D

NOTICE OF FINAL DECISION AND REMAND ORDER

This is the decision of the Final Adjudication Branch concerning your claim for compensation under the Energy Employees Occupational Illness Compensation Program Act of 2000, as amended, 42 U.S.C. § 7384 *et seq.* (EEOICPA or the Act). For the reasons set forth below, your claim is accepted.

STATEMENT OF THE CASE

On January 15, 2002, you filed a Form EE-1, Claim for Benefits under the EEOICPA. The claim was based, in part, on the assertion that you were an employee of a Department of Energy (DOE) contractor at a DOE facility. You stated on the Form EE-1 that you were filing for chronic obstructive pulmonary disease (COPD).

On the Form EE-3, Employment History, you stated you were employed at the Paducah gaseous diffusion plant (PGDP) in Paducah, Kentucky from 1951 to 1954 and 1957 to 1963. The Department of Energy verified this employment as June 6, 1952 to December 23, 1954 and January 20, 1958 to January 11, 1963.

The district office found that the medical evidence disclosed findings consistent with the diagnosis of chronic beryllium disease (CBD). On August 20, 2004, the Jacksonville district office issued a decision recommending that you are entitled to compensation of \$150,000 for chronic beryllium disease and that COPD is a consequential obstructive lung injury of CBD. The district office's recommended decision also concluded that you are entitled to medical benefits effective January 15, 2002 for chronic beryllium disease and the consequential injury of COPD.

On September 20, 2004, the Final Adjudication Branch received your written notification that you waive any and all objections to the recommended decision.

I have reviewed the medical evidence and find that it is sufficient to establish a diagnosis of pre-January 1, 1993 chronic beryllium disease. According to § 7384(13)(B) of the Act, the term "established chronic beryllium disease" means chronic beryllium disease as established by occupational or environmental history, or epidemiologic evidence of beryllium exposure; and, any three of the following criteria:

<http://www.dol.gov/esa/regs/compliance/owcp/eoicp/Decisions/GenericDecisions/Decisions...>

CLAIMANT ATTACHMENT 004  
5/28/08

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- Characteristic chest radiographic (or computed tomography (CT) abnormalities,
- Restrictive or obstructive lung physiology testing or diffusing lung capacity defect;
- Lung pathology consistent with chronic beryllium disease;
- Clinical course consistent with a chronic respiratory disorder;
- Immunologic tests showing beryllium sensitivity.

102-444141  
11/15/10  
IACB  
2546

According to the Department of Energy's Covered Facilities List, exposure to beryllium was possible during your employment at the PGDP. Your verified work for at least one day between 1952 and 1963 is sufficient to establish that you were exposed to beryllium. You have also submitted sufficient evidence to meet 3 of the above criteria: (1) Radiological reports of the chest from 1991, 1993, 1997 and 2001 show lung fibrosis, interstitial markings and chronic inflammatory changes; these findings are characteristic of CBD; (2) a 1993 pulmonary function test report contains a finding of a severe obstructive airway disease; this finding shows obstructive lung physiology testing; (3) medical reports from 1989 to 2001 contain findings of COPD, oxygen dependency and the use of bronchodilators; these findings show a clinical course consistent with a chronic respiratory disorder such as CBD. The evidence of record is sufficient to establish a diagnosis of pre-January 1, 1993 chronic beryllium disease.

I also find that the case must be remanded for a determination regarding the claimed condition of chronic obstructive pulmonary disease (COPD). The district office determined that COPD was a consequential injury of CBD. However, the implementing regulations are clear in stating that an injury, illness, impairment or disability sustained as a consequence of beryllium sensitivity or established chronic beryllium disease must be established with a fully rationalized medical report by a physician that shows the relationship between the injury, illness, impairment or disability and the beryllium sensitivity or established chronic beryllium disease. Neither the fact that the injury, illness, impairment or disability manifests itself after a diagnosis of beryllium sensitivity or established chronic beryllium disease, nor the belief of the claimant that the injury, illness, impairment or disability was caused by the beryllium sensitivity or established chronic beryllium disease is sufficient in itself to prove a causal relationship. [1] The medical evidence does not contain the required medical opinion.

**FINDINGS OF FACT**

1. On January 15, 2002, you filed a Form EF-1, Claim for Benefits under the EEOICPA.
2. The medical evidence is sufficient to establish that you have chronic beryllium disease. 42 U.S.C. § 7384i(13).
3. You were employed at the Paducah gaseous diffusion plant, Paducah, Kentucky, from June 6, 1952 to December 23, 1954 and January 20, 1958 to January 11, 1963. Beryllium was present at this facility during the time you were employed. Since you were exposed to beryllium in the performance of duty, you are a covered beryllium employee as defined in the Act. 42 U.S.C. § 7384i(7).
4. The Jacksonville district office issued the recommended decision on August 20, 2004.
5. On September 20, 2004, the Final Adjudication Branch received your written notification that you waive any and all objections to the recommended decision.

**CONCLUSIONS OF LAW**

<http://www.dol.gov/esa/regs/compliance/owep/eoicfp/Decisions.GenericDecisions/Decisions>

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PAGE NO. 284

2

U.S. DEPARTMENT OF LABOR

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



EMPLOYEE: [Name Deleted]

NEURAL

CLAIMANTS: [Name Deleted]  
[Name Deleted]  
[Name Deleted]  
[Name Deleted]

PLAQUES

FILE NUMBER: [Number Deleted]

DOCKET NUMBERS: 59062-2004  
59096-2004  
59097-2004  
59098-2004

THERE IS NO  
Blood test in the  
evidence for us  
CBD & he did not  
file for EBD

DECISION DATE: September 13, 2004

NOTICE OF FINAL DECISION

+ HE HAD NOT BEEN  
DIAGNOSED WITH

This is the decision of the Final Adjudication Branch concerning your claims for compensation under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA or the Act). See 42 U.S.C. § 7384 *et seq.* For the reasons set forth below, the Final Adjudication Branch accepts and approves your claims for survivor compensation for the condition of chronic beryllium disease.

STATEMENT OF THE CASE

HE FILED  
FOR ASBESTOSIS

On June 2, 2003, the employee filed a claim for compensation under the EEOICPA based on asbestosis and other lung condition. That claim was recommended for denial by the Seattle district office; however, additional medical documentation was received by the Final Adjudication Branch, who vacated the recommended decision by Remand Order dated September 8, 2003. The district office performed additional development of the medical evidence and recommended acceptance of the claim and medical benefits for chronic beryllium disease and denial of the claim for asbestosis, which was affirmed by Final Decision of the Final Adjudication Branch on July 6, 2004. Before payment could be issued, however, the employee passed away on June 12, 2004, and the claim was administratively closed. On June 25 ([Claimant 1, Claimant 2, and Claimant 3]) and June 28 ([Claimant 4]), 2004, you filed claims for survivor benefits under the EEOICPA based on chronic beryllium disease (CBD). A Form EE-3 (Employment History) previously filed by the employee indicated he worked at the Idaho National Environmental and Engineering Laboratory (INEEL) for Keiser Construction from January 1, 1954 to August 30, 1954 and for Phillips Petroleum, Idaho Nuclear, Aerojet General, and EG&G Idaho from October 1, 1954 to March 1, 1992. A representative of the Department of Energy (DOE) verified the worker's employment at INEEL from October 7, 1957 to March 2, 1992. INEEL is recognized as a covered DOE facility, from 1949 to the present, where the potential for beryllium exposure existed



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throughout the course of its operations because of beryllium use, residual contamination, and decontamination activities. See DOF, Office of Worker Advocacy, Facility List.

Medical evidence of record includes a chest x-ray and a CT scan, both dated October 13, 1992, that indicated the employee had multiple pleural plaques, and a chest x-ray, dated May 1, 2002, that indicated emphysematous changes within his lungs, densely calcified pleural plaques on the left lung, and scarring and associated bullous changes within the right lung base. In addition, the record includes a history of a clinical course of treatment of the employee for asbestosis and chronic obstructive pulmonary disease (COPD) dating from October 1992 to March 2003. The employee's pulmonary function test results, from October 13, 1992, showed an FVC of 3.62 and an FEV1 of 1.57, with an FEV1/FVC ratio of 43% before bronchodilators, and an FVC of 4.6 and FEV1 of 1.59 after bronchodilators. The employee's DLCO was markedly diminished at 11.77 or 35% of predicted.

District Medical Consultant Robert E. Sandblom, M.D., reviewed the employee's medical records, in a report dated January 5, 2004, and indicated the claimant had chest radiographic (or CT) abnormalities characteristic of CBD, restrictive or obstructive lung physiology testing or diffusing lung capacity defect, and a clinical course consistent with a chronic respiratory disorder.

You provided copies of your birth certificates that indicate each of you is the natural child of the employee, and copies of the certificates of marriage of [Claimant 1] and [Claimant 4] documenting your name changes. The file also contains a copy of the employee's certificate of death that indicates the employee was widowed when he passed away on June 12, 2004.

The Seattle district office determined that the employee was a covered beryllium employee as defined in § 7384l(7) of the EEOICPA. See 42 U.S.C. § 7384l(7). Further, the Seattle district office determined that the evidence submitted meets the criteria necessary to establish a diagnosis of chronic beryllium disease as defined by § 7384l(13), a covered occupational illness as defined by § 7384l(8)(B). See 42 U.S.C. § 7384l(8)(B) and (13). Also, the district office determined that you are the survivors of the employee, as defined by § 7384s(e)(3), and that you are entitled to compensation in the amount of \$37,500.00 each pursuant to §§ 7384s(a)(1) and (e)(1) of the EEOICPA. See 42 U.S.C. § 7384s(a)(1) and (e)(1). In addition, the district office concluded that you are entitled to reimbursement of medical expenses for the employee's chronic beryllium disease, retroactive to the date he filed his claim, June 2, 2003, through June 12, 2004, the date he passed away.

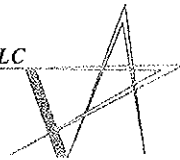
CLAIMANT ATTACHMENT 0011PAGE NO. 484

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\*\*\* FAX TX REPORT \*\*\*  
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*COMMONWEALTH ENVIRONMENTAL SERVICES, LLC*  
A Native American Woman Owned Company



# Fax Cover Sheet

To: , Hon. Secretary of Labor Hilda Solis, Jim Bibeault	From: Gary S. Vander Boegh
Fax: (202) 693-1465 (904) 357-4704 (202) 693-6111	Date: 11-23-10
Phone: (270) 450-0850	Pages: ___ Pages including the Cover Sheet
Re: Minnie Donald File No. XXXXX7985	CC: Attention Madam Solis, Jim Bibeault and David Miller

Urgent     For Review     Please Comment     Please Reply     Please Recycle

**Comments:**

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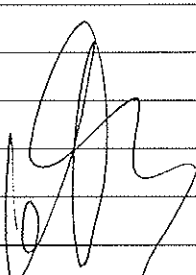
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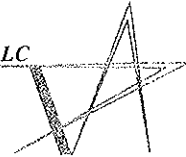
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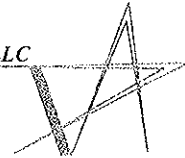
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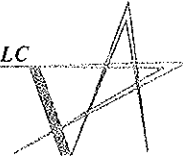
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