

U.S. DEPARTMENT OF LABOR

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



December 6, 2011

Anna K. Vander Boegh
4111 Hillcrest Ave.
Paducah, KY 42001

Dear Ms. Vander Boegh:

Enclosed please find the Final Decision on your claim for compensation under the Energy Employees' Occupational Illness Compensation Program Act. I regret that I could not provide a favorable decision regarding your CBD under Parts B and E of the Act and hearing loss under Part E of the Act.

If you disagree with this decision, you may request **reconsideration**. Such a request must be in writing and must be made within **30 days** of the date of issuance of this decision. It must clearly state the grounds upon which reconsideration is being requested. Your request for reconsideration should be sent to:

U.S. Department of Labor-DEEOIC
Final Adjudication Branch
Attn: FAB Hearing Unit
P.O. Box 77918
Washington, DC 20013-7918.

In order to ensure that you receive an independent evaluation of the evidence, your request for reconsideration will be reviewed by a Final Adjudication Branch hearing representative other than the undersigned.

If your claim was denied because you have not established covered employment under the EEOICPA and you have **new evidence** of either covered employment or exposure to radiation, beryllium, silica, or other toxic substances, you may request a **reopening** of your claim. If your claim was denied because the employee's cancer was not causally related to his work-related exposure to radiation or toxic substances and you can identify either a **change** in the probability of causation guidelines, a **change** in the dose reconstruction methods or an **addition of a class** of employees to the Special Exposure Cohort, you may also request a **reopening** of your claim. These requests to reopen your claim must be in writing and be sent, along with your supporting information, to the following address:

U.S. Department of Labor
District Director
400 West Bay Street, Suite 722

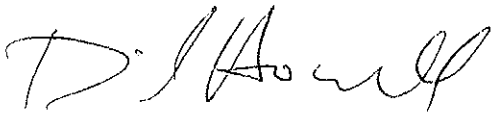
Jacksonville, FL 32202
1-877-336-4272

If you would like to complete an anonymous customer service survey, please visit our web site at www.dol.gov/owcp/energy.

Please be advised that the final decision on your claim may be posted on the agency's website if it contains significant findings of fact or conclusions of law that might be of interest to the public. If it is posted, your final decision will not contain your file number, nor will it identify you or your family members by name.

The case file is being returned to the Jacksonville district office. Please direct any questions to that office. Thank you for your cooperation.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Howell". The signature is written in a cursive style with a large initial "D" and a long, sweeping underline.

David F. Howell
Hearing Representative
Final Adjudication Branch



EMPLOYEE: Anna K. Vander Boegh

CLAIMANT: Anna K. Vander Boegh

FILE NUMBER: xxx-xx-0317

DOCKET NUMBERS: 10029607-2006
33265-2003

DECISION DATE: December 6, 2011

NOTICE OF FINAL DECISION

This is the decision of the Final Adjudication Branch (FAB) 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 for benefits under Parts B and E of the EEOICPA based on chronic beryllium disease (CBD) and under Part E of the Act for hearing loss is denied.

STATEMENT OF THE CASE

On August 22, 2006, you filed a claim based on skin cancer and on September 19, 2006, you filed a claim (Form EE-1) under Part E of the Act for benefits and identified chronic cough as your claimed medical condition. On March 23, 2010, you filed a claim for hearing loss under Part E of the Act. On September 7, 2010, you filed a claim for benefits based on CBD under Parts B and E of the Act.

On April 1, 2008, the FAB issued a Final Decision under Part E of the Act, awarding you medical benefits for your chronic cough (bronchitis) and skin cancer and under Parts B and E of the Act for your skin cancer and \$150,000 under Part B of the Act for your skin cancer. The FAB found that you worked at the K-25 Gaseous Diffusion Plant (GDP), a covered Department of Energy (DOE) facility, for Union Carbide, a covered DOE contractor, from May 15, 191945 to April 9, 1946; you were diagnosed with skin cancer on July 24, 2000 and bronchitis in 1986; and your skin cancer was "at least as likely as not" related to your work at a covered DOE facility and related to your toxic substance exposure at a covered DOE facility and your toxic substance exposure at a covered DOE facility was "at least as likely as not" a significant factor I causing, contributing to or aggravating your chronic bronchitis.

On June 11, 2009, the FAB issued a final decision, denying your claim under Part E of the Act for wage loss and impairment benefits based on your skin cancer and bronchitis.

On August 11, 2011, the FAB issued a final decision, awarding you \$52, 500 in impairment benefits for your covered illness of chronic bronchitis.

The district office reviewed source documents used to compile the U. S. Department of Labor Site Exposure Matrices (SEM), to determine whether or not it is possible that, given the employee's labor category and the work processes engaged in, the employee was exposed to a toxic substance in the course of employment, which corresponds to the claimed hearing loss. The district office determined that the evidence of record failed to establish a known causal link between hearing loss and exposure to toxic substances.

Regarding the claim for CBD, the district office noted that hospital records dating from February 25, 1986 showed findings of chest wheezing with some rhonchi and acute bronchitis and a diagnosis of acute bronchitis and labyrinthitis. However, chest x-rays did not establish a diagnosis of CBD and there was no medical evidence such as pulmonary function tests to establish a restrictive or obstructive lung function. Also, there was no medical evidence of along pathology report and no immunologic testing showing beryllium sensitivity. The district office also noted that there was no evidence of an abnormal beryllium lymphocyte proliferation test or a beryllium lymphocyte transformation test.

By letters dated September 8, 2010, September 14, 2010 and November 9, 2010, the district office asked that you provide evidence to establish a claim for CBD. You were advised of the medical criteria and asked to provide the evidence within 30 days. However, this evidence has not been received.

On July 15, 2011, the Jacksonville district office issued a recommended decision under Part E of the Act, concluding that you had 21% impairment of the whole person based on your chronic bronchitis. The district office recommended that you be awarded \$52,500.00 (\$2500 for each of the (21) twenty-one impairment percentage points). The district office also recommended that your claim for CBD under Parts B and E of the Act and hearing loss under Part E of the Act be denied.

Your authorized representative submitted on your behalf, a written statement waiving the right to object to the recommended decision only as to benefits awarded and retaining the right to object to the recommended decision regarding denied benefits.

Based upon a review of the case file evidence, I make the following:

FINDINGS OF FACT

- 1) On March 23, 2010, you filed a claim for hearing loss under Part E of the Act and on September 7, 2010, you filed a claim for benefits based on CBD under Parts B and E of the Act.
- 2) You worked at the K-25 Gaseous Diffusion Plant (GDP) , a covered Department of Energy (DOE) facility, for Union Carbide, a covered DOE contractor, from May 15, 191945 to April 9, 1946.

- 3) A search of the SEM and the totality of the evidence is insufficient to establish that toxic substance exposure at a covered DOE facility was “at least as likely as not” a significant factor in causing, contributing to or aggravating your hearing loss.
- 4) The medical evidence of record is insufficient to establish that the employee was diagnosed with CBD.

Based on these facts, the undersigned makes the following:

CONCLUSIONS OF LAW

Section 30.316(a) of the EEOICPA implementing regulations provides that, “if the claimant does not file a written statement that objects to the recommended decision and/or requests a hearing within the period of time allotted in 20 C.F.R. § 30.310, or if the claimant waives any objection to all or part of the recommended decision, the Final Adjudication Branch (FAB) may issue a decision accepting the recommendation of the district office, either whole or in part.” 20 C.F.R. § 30.316(a). Your authorized representative, Gary Vander Boegh, waived the right to object to the recommended decision only as to benefits awarded and retained the right to object to the part of the decision denying benefits. The timeframe to object has expired.

The EEOICPA was established to provide compensation benefits to covered employees (or their survivors) that have been diagnosed with designated occupational illnesses incurred as a result of their exposure to radiation, beryllium, or silica, while in the performance of duty for the Department of Energy and certain of its vendors, contractors, and subcontractors. The EEOICPA, section 42 U.S.C. § 7384l(15), defines “occupational illness as a covered beryllium illness, cancer referred to in section 7384l(9)(B) of this title, specified cancer, or chronic silicosis, as the case may be.”

Under Part B of the Act, to establish a diagnosis of CBD before January 1, 1993, the employee must have had “an 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).”

To establish a diagnosis of CBD on or after January 1, 1993 the medical evidence must include “an abnormal beryllium lymphocyte proliferation test performed on either blood or lung lavage cells, together with lung pathology consistent with CBD, including (i) a lung biopsy showing granulomas or a lymphocytic process consistent with CBD; (ii) a computerized axial tomography scan showing changes consistent with CBD; or (iii) pulmonary function or exercise testing showing pulmonary deficits consistent with CBD.” 42 U.S.C. § 7384l (13).

The medical evidence submitted does not establish that you were diagnosed with CBD or that you meet the above criteria for CBD. Consequently, I find that you are not entitled to benefits

under section 7384s of the Act, and that your claim for compensation based on CBD under Part B of the EEOICPA is denied. 42 U.S.C. § 7384l(15) and 42 U.S.C. § 7384s.

Under Part E of the Act, a rationalized medical report including a diagnosis of CBD from a qualified physician is required to establish CBD. The rationalized report should contain an evaluation of the employee's medical condition and a finding that it is "at least as likely as not" that exposure to beryllium at a DOE covered facility was a significant factor in aggravating, contributing to, or causing the CBD. See Federal (EEOICPA) Unified Procedure manual Ch. 2-10009b (October 2009).

There is no evidence to establish a diagnosis of CBD under Part E of the Act. Therefore, your claim for CBD under Part E of the Act is denied. 42 U.S.C. §7385s.

Regarding your claim for hearing loss, hearing loss can be compensable under Part E of the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) if such loss arises as a result of exposure to one or more of a specified list of the organic solvents in conjunction with employment in at least one of certain specified labor categories during a prescribed timeframe. To be compensable, all of the following conditions must be satisfied for the employee:

- (1) Exposure to certain specific organic solvents (Toluene, Styrene, Xylene, Trichloroethylene, Methyl Ethyl Ketone, Methyl Isobutyl Ketone, and Ethyl Benzene) for 10 consecutive years; and
- (2) Verified covered employment within at least one specific job category for a period of 10 consecutive years, completed prior to 1990; and
- (3) Diagnosed sensorineural hearing loss in both ears (conductive hearing loss is not known to be linked to toxic substance exposure). See Federal (EEOICPA) Unified Procedure Manual Ch.201000.18 (July 2011).

In this case, the evidence is insufficient to establish that you have hearing loss as defined under Part E of the Act.

Consequently, I find that you are not entitled to benefits under Part E of the EEOICPA based on your hearing loss. 42 U.S.C. § 7385s-1.

Washington, DC



David F. Howell
Hearing Representative
Final Adjudication Branch

CERTIFICATE OF SERVICE

I hereby certify that on December 6, 2011, a copy of the Notice of Final Decision was sent by regular mail to the following:

Anna K. Vander Boegh
4111 Hillcrest Ave.
Paducah, KY 42001

Authorized Representative
Gary S. Vander Boegh
7660 Old Hickleville Road
West Paducah, KY 42086



David F. Howell
Hearing Representative
Final Adjudication Branch