

U. S. DEPARTMENT OF LABOR

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

RECEIVED
7/22/13
ms



July 15, 2013

Employee: [REDACTED]

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

Dear Mr. Vander Boegh:

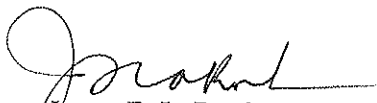
Enclosed please find a Notice of final decision concerning the claim of the employee listed above for compensation under the Energy Employees Occupational Illness Compensation Program Act. 42 U.S.C. § 7384 *et seq.* His claim for restrictive lung disease and lung nodule under Part E of the Act is denied. I have enclosed a copy of the cover letter along with the Final Decision.

Please note that the representative is limited to a fee of 2% of the amount of lump-sum compensation awarded for the filing of an initial claim and an additional 10% of the difference between the amount of potential lump-sum compensation listed in any recommended decision and the amount actually awarded in the final decision with respect to any objections to a recommended decision. 20 C.F.R. § 30.603(b) (2013).

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

Any future correspondence, inquiries, or telephone calls should be directed to the Jacksonville district office. Thank you for your cooperation.

Sincerely,

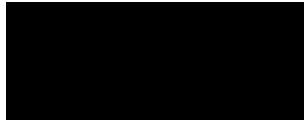

Jeana F. LaRock
Hearing Representative

U. S. DEPARTMENT OF LABOR

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



July 15, 2013



Dear Mr. [REDACTED]

Enclosed please find a Notice of Final Decision Following a Review of the Written Record on your claim for compensation under the Energy Employees Occupational Illness Compensation Program Act. 42 U.S.C. § 7384 *et seq.* Your claim for restrictive lung disease and lung nodule under Part E of the Act is denied. I regret that I could not provide a favorable decision on your claim. A copy of the final decision has been sent to your authorized representative.

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. The request for reconsideration should be sent to:

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

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

If the 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 a toxic substance, you may request a **reopening** of the claim. If the claim was denied because the cancer was not causally related to work-related exposure to radiation 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 the claim. These requests to reopen the claim must be in writing and be sent, along with your supporting information, to the following address:

U.S. Department of Labor/DEEOICP
Attn: District Director (REOPENING)
Charles E. Bennett Federal Building
400 West Bay Street, Suite 722
Jacksonville, FL 32202

A new claim form may be filed with the district office for any conditions you consider related to toxic exposures during employment at a Department of Energy covered facility. Any claim filed will be evaluated and/or developed for compensability under the Act.

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.

Please note that the representative is limited to a fee of 2% of the amount of lump-sum compensation awarded for the filing of an initial claim and an additional 10% of the difference between the amount of potential lump-sum compensation listed in any recommended decision and the amount actually awarded in the final decision with respect to any objections to a recommended decision. 20 C.F.R. § 30.603(b) (2013).

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

Except as provided above, all future correspondence, inquiries or telephone calls should be directed to the Jacksonville district office. Thank you for your cooperation.

Sincerely,



Jeana F. LaRock
Hearing Representative


cc: Gary S. Vander Boegh,
Authorized Representative

CERTIFICATE OF SERVICE

I hereby certify that on July 15, 2013, a copy of the Notice of Final Decision was sent to the following:



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


Jeana F. LaRock
Hearing Representative



EMPLOYEE: [REDACTED]
CLAIMANT: [REDACTED]
FILE NUMBER: XXX-XX-5260
DOCKET NUMBER: 20130506-12005935-1
DECISION DATE: July 15, 2013

NOTICE OF FINAL DECISION

This decision of the Final Adjudication Branch (FAB) concerns 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 restrictive lung disease and lung nodule under Part E of the Act is denied.

STATEMENT OF THE CASE

On December 24, 2012, you filed a form EE-1, Claim for Benefits under EEOICPA, for restrictive lung disease. On March 18, 2013, you filed an additional form EE-1, Claim for Benefits under EEOICPA, for lung nodule.

On the form EE-3, Employment History, you indicated you were employed at the Paducah Gaseous Diffusion Plant (GDP)¹ in Paducah, Kentucky, in the mid 1970's. The Department of Energy (DOE) provided a personnel clearance master card that provided evidence you were issued a security clearance for the Paducah GDP from April 5, 1972 to August 21, 1972. However, no actual dates of employment were listed or verified during that time period. Additionally, the district office requested your social security itemized statement of earnings which showed you worked for Charles E. Storey in 1969, 1970 and 1973. The DOE provided evidence that confirmed Charles E. Storey was a covered DOE contractor for multiple time periods between March 10, 1971 and December 6, 1974. However, no evidence was submitted showing that your employment for Charles E. Storey was performed at the Paducah GDP. Lastly, you submitted multiple EE-4, Employment History Affidavits, stating that you worked for Charles E. Storey in 1975. The affidavits are not supported by your earnings records from the Social Security Administration.²

¹ The Paducah GDP is a covered DOE facility beginning in 1951. See DOE's worker's advocacy facility listings at: <http://www.hss.energy.gov/HealthSafety/FWSP/Advocacy/faclist/findfacility.cfm> (retrieved July 15, 2013).

² The employment evidence is not sufficient to establish covered DOE contractor/subcontractor employment. Although covered employment has not been verified, the district office evaluated your claim to determine if the claimed illnesses were related to an exposure at a covered DOE facility.

The medical evidence on file includes a pulmonary function report dated November 16, 2012, signed by Theo Powell, D.O., which diagnosed mild restrictive ventilatory defect. A high resolution chest CT report dated January 28, 2013, signed by Robert Garneau, M.D., shows you have a lung nodule in the left lower lobe.

On December 24, 2012, you completed an Occupational History Questionnaire (OHQ) that identified your job title (structural and metal worker), and toxic substances to which you may have been exposed (steel, stainless steel and welding fumes) in the course of your employment. The district office reviewed source documents used to compile the U. S. Department of Labor Site Exposure Matrices (SEM)³ to determine whether or not it is possible that, given your labor category and the work processes engaged in, you were exposed to a toxic substance in the course of employment which corresponds to the claimed medical conditions. The SEM failed to show that you were exposed to any toxic substances with the possible specific health effect(s) of restrictive lung disease or a lung nodule.

The district office provided you the opportunity to substantiate your claim by sending development letters dated March 12, 2013, and March 28, 2013. The letters requested you provide a description of the toxic substances you were exposed to and a medical opinion as to whether these toxic substances caused, contributed to, or aggravated your claimed illnesses. No evidence of this type was received.

On May 6, 2013, the Jacksonville district office issued a decision recommending denial of your claim under Part E of the Act since the evidence does not establish that it is "at least as likely as not" that exposure to a toxic substance at a DOE facility was a significant factor in aggravating, contributing to, or causing your restrictive lung disease and lung nodule. The recommended decision explained that you had 60 days to object to the recommended decision or submit a waiver of objections, and that period expired on July 5, 2013. No objection or hearing request was received.

FINDINGS OF FACT

1. On December 24, 2012, you filed a claim for benefits under Part E of the Act for restrictive lung disease. On March 18, 2013, you filed an additional claim for benefits under Part E of the Act for lung nodule.
2. You were issued a security clearance for the Paducah GDP from April 5, 1972 to August 21, 1972; however, covered DOE contractor or subcontractor employment has not been confirmed.
3. The medical evidence supports you were diagnosed with restrictive lung disease and have a lung nodule.

³ The SEM acts as a repository of information related to toxic substances potentially present at covered DOE sites and has information regarding site investigations and Haz-Map (Occupational Exposure to Hazardous Agents) to assist in evaluating causation.

4. The evidence is insufficient to establish that you were exposed to a toxic substance at a covered DOE facility with the known health effect of restrictive lung disease or a lung nodule.

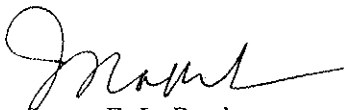
CONCLUSIONS OF LAW

The implementing regulations provide that within 60 days from the date the recommended decision is issued, the claimant must state, in writing, whether he or she objects to any of the findings of fact and/or conclusions of law contained in such decision and whether a hearing is desired. 20 C.F.R. § 30.310(a) (2013). 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 or if the claimant waives any objections to the recommended decision, the FAB may issue a decision accepting the recommendation of the district office. 20 C.F.R. § 30.316(a). No objection or request for a hearing was filed within this time period.

Under Part E of the Act, a covered illness means an illness resulting from exposure to a toxic substance including biological and/or chemical exposure. 42 U.S.C. § 7385s(2). The term "covered DOE contractor employee" means any DOE contractor employee determined to have contracted a covered illness through exposure at a DOE facility. 42 U.S.C. § 7385s(1).

You were provided the opportunity to submit medical evidence to support that your restrictive lung disease and lung nodule were linked to toxic substances at the Paducah GDP; however, no additional information concerning this potential relationship was received. SEM shows no causal link between your potential exposure to a toxic substance(s) and the claimed illnesses of restrictive lung disease and lung nodule. There is insufficient evidence to determine that exposure to a toxic substance was "at least as likely as not" a significant factor in aggravating, contributing to or causing the illnesses of restrictive lung disease and lung nodule. 42 U.S.C. § 7385s-4(c). Since the evidence does not establish that you have contracted restrictive lung disease and lung nodule through exposure to a toxic substance at a DOE facility, these illnesses cannot be considered "covered illnesses" under Part E of the Act. 42 U.S.C. §§ 7385s(1), 7385s(2). Therefore, your claim under Part E of the Act for restrictive lung disease and lung nodule is denied. 42 U.S.C. § 7385s.

Jacksonville, FL



Jeana F. LaRock
Hearing Representative
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