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November 15, 2002  
DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

Name of Case: Worker Appeal  
Date of Filing: October 18, 2002  
Case No.: TIA-0009

XXXXXXXXXX (the applicant) applied to the Office of Worker Advocacy of the Department of Energy (DOE) for assistance in filing for state workers' compensation benefits for her late husband, XXXXXXXXXXX (the worker). The Office of Worker Advocacy determined that the applicant is not eligible for the assistance program. The applicant appeals that determination. As explained below, we have concluded that the appeal should be granted and the application for assistance remanded to the Office of Worker Advocacy for further consideration.

*I. Background*

The Energy Employees Occupational Illness Compensation Program Act of 2000, as amended (the EEOICPA or the Act) concerns workers involved in various ways with the nation's atomic weapons program. See 42 U.S.C. §§ 7384, 7385. Part A of the Act provides federal monetary and medical benefits to certain workers having radiation-induced cancers, beryllium illness, or silicosis. Part D of the Act provides a DOE program to assist DOE contractor employees in filing for state workers' compensation benefits for illnesses caused by exposure to toxic substances at DOE facilities. This case concerns Part D of the Act.

The DOE has issued regulations to implement Part D of the Act. These regulations are referred to as the Physician Panel Rule. See 67 Fed. Reg. 52841 (August 13, 2002) (to be codified at 10 C.F.R. Part 852).

The Office of Worker Advocacy determined that the applicant's late husband was not a DOE contractor employee. See September 10, 2002 Letter from the Office of Worker Advocacy to the applicant. Accordingly, the Office of Worker Advocacy

determined that the applicant was not eligible for DOE assistance in filing for state workers' compensation benefits.

In her appeal, the applicant states that her late husband was a DOE contractor employee. She argues that her husband worked at the DOE's Kansas City, Missouri plant.

## II. Analysis

Part D of the Act, which establishes the program at issue here, covers "Department of Energy contractor employees." 42 U.S.C. § 7385o(b). In order to be a "Department of Energy contractor employee," a contractor employee must have worked at a "Department of Energy facility." 42 U.S.C. § 73841(11); 67 Fed. Reg. 52854 (to be codified at 10 C.F.R. § 852.2). Pursuant to an Executive Order, DOE has published a list of DOE facilities. 66 Fed. Reg. 31218 (June 11, 2001) (current list of facilities). That list also includes facilities that fall within the Act's definition of "beryllium vendors" and "atomic weapons employers," whose employees are covered by Part A of the Act.

In her application, the applicant stated that her husband worked for Bendix and Allied Signal at 95<sup>th</sup> and Troost, Kansas City, Missouri. In her appeal, the applicant indicates that her husband also worked for Honeywell at that location.

A worker who was employed by Bendix, Allied Signal, and Honeywell at 95<sup>th</sup> & Troost, Kansas City, Missouri, is a DOE contractor employee. The DOE's Kansas City plant is located at 95th & Troost, and the three firms mentioned are the successive managing contractors of the facility. The DOE's published list of DOE facilities includes the DOE's Kansas City plant. 66 Fed. Reg. 31221.

The Office of Worker Advocacy determination indicates that it viewed the applicant's description of her husband's employment as not falling within the definition of a DOE contractor employee. As indicated above, we believe that determination was in error and, therefore, we are remanding the appeal to the Office of Worker Advocacy for further processing.

IT IS THEREFORE ORDERED THAT:

- (1) The Appeal filed in Worker Advocacy, Case No. TIA-0009 be, and hereby is, granted as set forth in Paragraph (2) below.

(2) The application for assistance is remanded to the Office of Worker Advocacy for further processing.

(3) This is a final order of the Department of Energy.

George B. Breznay  
Director  
Office of Hearings and Appeals

Date: November 15, 2002