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April 9, 2003  
DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

Name of Case: Worker Appeal  
Date of Filing: March 17, 2003  
Case No.: TIA-0022

XXXXXXXXXX (the applicant) applied to the Department of Energy (DOE) Worker Advocacy Office for DOE assistance in filing for state workers' compensation benefits based on the employment of her late husband, XXXXXXXXXXXX (the worker). The DOE Worker Advocacy Office determined that the worker was not a DOE contractor employee and, therefore, that the applicant was not eligible for DOE assistance. The applicant appeals that determination. As explained below, we have concluded that the determination is correct.

*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. The Act creates two programs for workers.

The Department of Labor (DOL) administers the first EEOICPA program, which provides federal monetary and medical benefits to workers having radiation-induced cancer, beryllium illness, or silicosis. Eligible workers include DOE employees, DOE contractor employees, as well as workers at an "atomic weapons employer facility" in the case of radiation-induced cancer, and workers at a "beryllium vendor" in the case of beryllium illness. See 42 U.S.C. § 7384l(1). The DOL program also provides federal monetary and medical benefits for uranium workers who receive a benefit from a program administered by the Department of Justice (DOJ) under the Radiation Exposure Compensation Act (RECA) as amended, 42 U.S.C. § 2210 note. See 42 U.S.C. § 7384u.

The DOE administers the second EEOICPA program, which does not provide for monetary or medical benefits. Instead, the DOE program provides for an independent physician panel assessment of whether a "Department of Energy contractor employee" has an illness related to exposure to a toxic substance at a DOE facility. 42 U.S.C. § 7385o. In general, if a physician panel issues a determination favorable to the employee, the DOE instructs the DOE contractor not to contest a claim for state workers' compensation benefits unless required by law to do so, and the DOE does not reimburse the contractor for any costs that it incurs if it contests claim. 42 U.S.C. § 7385o(e)(3). The DOE program is limited to DOE contractor employees because DOE and DOE contractors would not be involved in state workers' compensation proceedings involving other employers.

The regulations for the DOE program are referred to as the Physician Panel Rule. See 67 Fed. Reg. 52,841 (August 13, 2002) (to be codified at 10 C.F.R. Part 852). The DOE Worker Advocacy Office is responsible for this program and has a web site that provides extensive information concerning the program. 1/

Pursuant to an Executive Order, the DOE has published a list of facilities covered by the DOL and DOE programs, and the DOE has designated next to each facility whether it falls within the EEOICPA's definition of "atomic weapons employer facility," "beryllium vendor," or "Department of Energy facility." 67 Fed. Reg. 79,068 (December 27, 2002) (current list of facilities). 2/ The DOE's published list also refers readers to the DOE Worker Advocacy Office web site for additional information about the facilities. 67 Fed. Reg. 79,069.

This case involves the DOE program, i.e., the program through which DOE contractor employees may obtain independent physician panel determinations. The applicant states that the worker was employed

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1/ See [www.eh.doe.gov/advocacy](http://www.eh.doe.gov/advocacy).

2/ See Executive Order No. 13,179 (December 7, 2000). The DOE first published a list in January 2001, 66 Fed. Reg. 4003 (January 17, 2001), and a revised list in June 2001, 66 Fed. Reg. 31218 (June 11, 2001).

by Vulcan Crucible Steel from 1939 to 1965, except for military service from 1944 and 1946. The applicant further states that the worker became ill with lung disease as a result of his employment.

The DOE Worker Advocacy Office determined that the worker was employed by an "atomic weapons employer," not a DOE contractor. See December 6, 2002 letter from DOE Worker Advocacy Office to the applicant. Accordingly, the DOE Worker Advocacy Office determined that the worker was not eligible for the physician panel process. In the appeal, the applicant argues that the worker was a DOE contractor employee.

## *II. Analysis*

### *A. Worker Programs*

As an initial matter, we emphasize that the DOE physician panel process is separate from state workers' compensation proceedings. A DOE decision that an applicant is not eligible for the DOE physician panel process does not affect (i) an applicant's right to file for state workers' compensation benefits or (ii) whether the applicant is eligible for those benefits under applicable state law.

Similarly, we emphasize that the DOE physician panel process is separate from any claims made under other statutory provisions. Thus, a DOE decision concerning the physician panel process does not affect any claims made under other statutory provisions, such as programs administered by DOL and DOJ.

We now turn to whether the applicant in this case is eligible for the physician panel process.

### *B. Whether the Applicant is Eligible for the DOE Physician Panel Process*

As stated above, the Physician Panel Rule applies to DOE contractor employees who worked at DOE facilities. As explained below, the worker was employed at an atomic weapons employer facility.

The DOE's published facilities list, and the accompanying DOE Worker Advocacy Office description, identify the Vulcan Crucible Steel plant as an atomic weapons employer facility during the worker's employment. The DOE Worker Advocacy Office description identifies Vulcan Crucible Steel as a predecessor of Aliquippa Forge and (i) an "AWE," i.e., an "atomic weapons employer facility," from 1947 to 1950, when the firm fabricated uranium metal for the AEC and (ii) a DOE facility from 1983 to 1994. See 67 Fed. Reg. 79,073 (entry for Aliquippa Forge); [www.eh.doe.gov/advocacy](http://www.eh.doe.gov/advocacy) (Aliquippa Forge entry in searchable database on sites).

The foregoing description is consistent with the DOE's report on the plant under the Formerly Utilized Sites Remedial Action Program (FUSRAP). The FUSRAP report for the Vulcan Crucible Steel plant indicates that the DOE designated the site for environmental remediation in 1983, long after the end of the worker's employment. See [www.em.doe.gov](http://www.em.doe.gov). (searchable database on sites).

We have no reason to believe that the foregoing descriptions are inaccurate, and they indicate that when the worker was employed at the Vulcan Crucible Steel plant, the plant was not a DOE facility. A DOE facility is a facility where (i) the DOE conducted operations and (ii) had a proprietary interest or contracted with a firm to provide management and operation, management and integration, environmental remediation services, or construction or maintenance services. 42 U.S.C. § 73841(12); 67 Fed. Reg. 52854 (to be codified at 10 C.F.R. § 852.2). During the worker's employment, the Vulcan Crucible Steel plant was privately owned and operated and, therefore, was not a facility where DOE conducted operations, had a proprietary interest, or contracted for management and operation, management and integration, environmental remediation services, or construction and maintenance services.

Because the worker was not employed at a DOE facility, the applicant is not eligible for the DOE physician panel process. Again, we emphasize that our decision does not affect whether the applicant is eligible for (i) state workers' compensation benefits or (ii) federal monetary and medical benefits available under other programs, such as those that DOL and DOJ administer.

IT IS THEREFORE ORDERED THAT:

(1) The Appeal filed in Worker Advocacy, Case No. TIA-0022 be, and hereby is, denied.

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

George B. Breznay  
Director  
Office of Hearings and Appeals

Date: April 9, 2003

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