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February 24, 2004  
DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

*Appeal*

Name of Case:            Worker Appeal  
Date of Filing:         January 21, 2004  
Case No.:                TIA-0043

XXXXXXXXXXXXXXXXXXXX (the applicant) applied to the Office of Worker Advocacy of the Department of Energy (DOE) for DOE assistance in filing for state workers' compensation benefits. Based on a negative determination from an independent Physician Panel, the DOE Office of Worker Advocacy (OWA or Program Office) determined that the applicant was not eligible for the assistance program. The applicant appeals that determination. As explained below, the appeal should be denied.

*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.

This case concerns Part D of the Act, which provides for a DOE program to assist Department of Energy contractor employees in filing for state workers' compensation benefits for illnesses caused by exposure to toxic substances at DOE facilities. 42 U.S.C. § 7385o. The DOE Office of Worker Advocacy is responsible for this program and has a web site that provides extensive information concerning the program. 1/

Part D establishes a DOE process through which independent physician panels consider whether exposure to toxic substances at DOE facilities caused, aggravated or contributed to employee illnesses. Generally, if a physician panel issues a determination favorable to the employee, the DOE Office of Worker Advocacy accepts the

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

determination and assists the applicant in filing for state workers' compensation benefits. In addition, the DOE instructs the contractor not to oppose the claim unless required by law to do so, and the DOE does not reimburse the contractor for any costs that it incurs in opposing the claim. 42 U.S.C. § 7385o(e)(3). 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). As stated above, the DOE Office of Worker Advocacy is responsible for this program.

The Physician Panel Rule provides for an appeal process. As set out in Section 852.18, an applicant may request the DOE's Office of Hearings and Appeals (OHA) to review certain Program Office decisions. An applicant may appeal a decision by the Program Office not to submit an application to a Physician Panel, a negative determination by a Physician Panel that is accepted by the Program Office, and a final decision by the Program Office not to accept a Physician Panel determination in favor of an applicant. The instant appeal is filed pursuant to that Section. Specifically, the applicant seeks review of a negative determination by a Physician Panel that was accepted by the Program Office. 10 C.F.R. § 852.18(a)(2). See *Worker Appeal* (Case No. TIA-0025), 28 DOE ¶ 80,294 (2003).

In her application for DOE assistance in filing for state workers' compensation benefits, the applicant asserted that she worked at the DOE's Oak Ridge X-10 plant in Oak Ridge, Tennessee from June 20, 1978 through August 18, 1978. During that time, she was a "Plotter Operator," a clerical position that involved changing computer tapes and printing large documents. She believes that working in the X-10 environment caused her to experience "hypothyroidism" and "stomach problems."

The Physician Panel issued a negative determination on this claim. The Panel found that the applicant's illness did not arise "out of and in the course of employment by a DOE contractor and exposure to a toxic substance at a DOE facility." The Panel based this conclusion on the standard of whether it believed that "it was at least as likely as not that exposure to a toxic substance at a DOE facility during the course of the worker's employment by a DOE contractor was a significant factor in aggravating, contributing to or causing the worker's illness or death." In reaching its determination, the Panel noted that the applicant worked at the X-10 plant for only two months, a relatively short period of time. The Panel also found that there was insufficient information to support

a conclusion that the applicant experienced any significant exposure to a toxic substance while at work. Further, the Panel found it unlikely that the stated conditions could be related to toxic exposure at work, given the 23-year latency period between the onset of the symptoms and the time when the applicant worked at the X-10 plant. The Panel noted that the symptoms that the applicant complains of are common in the normal population and "are not indicative of a specific toxic exposure."

## *II. Analysis*

The applicant seeks review of the Panel's determination. She objects to the fact that the Panel found her two-month work period at the X-10 site to be too short to conclude that her physical conditions were caused by exposure to a toxic substance at a DOE site. She also objects to the Panel's finding that there is insufficient information to support a conclusion that she actually was exposed to any toxic substance while she was at the plant. She believes that the "dust from the building and environment settled on [her] body 24 hours a day," and that she "drank the water from water fountains and ate the food from the cafeteria." She implies that toxic substances were present in the overall environment at the X-10 plant. She blames the lack of records regarding her toxic exposure to the DOE's poor record-keeping, noting that no monitoring records for her were located in the industrial hygiene data bases for monitoring records.

She states that her symptoms developed in approximately 1979, shortly after her work at the plant, thus disputing the 23-year latency period posited by the Panel. However, she indicates that her medical records for the period from 1979 through 1995 are, for various reasons, unavailable.

There is no question that this applicant suffers from several illnesses, including a thyroid condition and stomach problems. However, there is simply no evidence that these conditions were caused by exposure to any toxic substance at the X-10 plant. In fact, there is no evidence that the applicant actually experienced exposure to any toxic substance during her brief employment in a clerical position at that site. Other than stating this possibility, the applicant provides no support for her contention that she was exposed to a toxic substance in the dust, food, air or water at the X-10 plant that caused her illnesses. She has not provided, for example, a diagnosis from her own physician indicating that her conditions were caused by exposure to a toxic substance at

a DOE site. *See, Worker Appeal (TIA-0029), 28 DOE ¶ 80,303 (October 1, 2003).*

The applicant's belief, with nothing more, is not convincing. It does not establish any deficiency or error in the Panel's determination.

Because the applicant has not identified a deficiency or error in the Panel's determination, there is no basis for an order remanding the matter to OWA for a second Panel determination. Accordingly, the appeal should be denied.

IT IS THEREFORE ORDERED THAT:

- (1) The Appeal filed in Worker Advocacy Case No. TIA-0043 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: February 24, 2004