

\* The original of this document contains information which is subject to withholding from disclosure under 5 U.S.C. 552. Such material has been deleted from this copy and replaced with XXXXXXXX's.

April 8, 2004  
DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

*Appeal*

Name of Case: Worker Appeal  
Date of Filing: February 27, 2004  
Case No.: TIA-0054

XXXXXXXX XXXXXXXX (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. The applicant was a DOE contractor employee at a DOE facility. 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

---

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

determination and instructs the contractor not to oppose the claim unless required by law to do so. The DOE has issued regulations to implement Part D of the Act. These regulations are referred to as the Physician Panel Rule. See 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 for fourteen years she worked as a storekeeper, a reproduction operator and a mail clerk at the DOE's Hanford site in Richland, Washington. The applicant stated that she worked in the 300 Area of the Hanford Site. She was diagnosed with minimal change disease, nephrotic syndrome and anemia about nine years after she stopped working at the Hanford site. The applicant believes that exposure to contaminants in the workplace caused these diseases.

The Physician Panel issued a negative determination on each of the diseases listed in her claim. In each instance, the Panel found that the worker'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." Physician Panel Determination.

In considering the worker's claims for minimal change disease and nephrotic syndrome, the Physician Panel unanimously found that "there is no evidence in the chart review to indicate an association between the patient's employment and any acute poisoning including a nephrotoxic injury." With respect to the nephrotic syndrome, the Physician Panel also found that "the [patient's employment] history

showed no evidence of specific known incident or exposure to solvents or toxicants at work." With respect to the anemia, the Physician Panel unanimously found that it was "most likely that her anemia is due to her renal disease." Once again, they concluded that the "history failed to show any evidence of specific known incident or exposure to solvents or toxicants that could be associated with her anemia." *Id.*

## *II. Analysis*

The applicant seeks review of the Panel's determination. In her appeal letter, the applicant asserts that her former co-workers in the 300 Area have a high level of illness, indicating the presence of environmental hazards.

Out of 38 of us so far, a few are deceased, and the others suffer from different disorders. Cancer, MS, brain tumors, reproduction disorders, stomach complications, and liver and kidney disease.

February 24, 2004 Appeal Letter. She also asserts that the 3706 Building where she worked was eventually closed because of safety concerns, and that the shallow burial of contaminated wastes occurred in the 300 Area. While she acknowledges that her disease can be caused by many things, including things unrelated to her DOE workplace, she contends that other toxic materials that existed in the 300 Area such as lead, mercury, lithium, solvents and ammonia are potential causes of her diseases.

When we used solvents to clean the rollers of all the machines daily, we wore gloves but no protection from inhalation. Also I was exposed to ammonia fumes daily for at least a year. For seven hours a day I worked in that room with the exception of two breaks and my lunch.

*Id.*

The individual's assertions in her Appeal letter concerning her exposure to toxic materials in the workplace do not indicate Physician Panel error. The Panel addressed the exposures identified in the record. In her original application, which was reviewed by the Physician Panel, she stated that she was routinely exposed to ammonia fumes in the workplace, and that she used solvents to clean the rollers of printing presses and copying machines. She also stated that she delivered mail in the 300 Area and was exposed to the air in "almost every building" in the area. Employee Application at 14. The Panel specifically rejected this level of exposure to

these hazards as a probable cause of her renal disease. As the Panel's determination states, "there is no evidence in the chart review to indicate an association between the patient's employment and any acute poisoning including a nephrotoxic injury. In addition, the history showed no evidence of specific known incident or exposure to solvents or toxicants at work." Physician Panel Determination at 1. Similarly, the Panel found that her history "failed to show any evidence of specific incident or exposure to solvents or toxicants that could be associated with her anemia." *Id.* at 3. In making these findings, the Panel clearly rejected the level of exposure to ammonia and cleaning solvents reported by the individual as sufficient to give rise to her renal disease and anemia. They also rejected her report of general exposure to background toxicity in the 300 Area as sufficient to cause or to aggravate these diseases. The applicant's other assertions on appeal concerning illnesses and deaths among her former co-workers and the alleged shallow burial of toxic wastes on or near the 300 Area are undocumented and do not indicate Panel error.

As discussed above, the standard to be applied in these cases is whether 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 the worker's illness or death. The Panel applied that standard here, and the applicant has not pointed to any data in the record either contradicting the Panel's determination or suggesting that the Panel's overall decision was in error. In sum, the applicant's beliefs, with nothing more, are not convincing. They do 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-0054 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 8, 2004