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July 9, 2004
DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Appeal

Name of Case: Worker Appeal
Date of Filing: March 24, 2004
Case No.: TIA-0066

XXXXXXXXXX (the Applicant) applied to the Department of Energy (DOE) Office of Worker Advocacy (OWA) for assistance in filing for state workers' compensation benefits. The Applicant was a DOE contractor employee at a DOE facility. An independent physician panel (the Physician Panel or the Panel) found that the Applicant did not have an illness related to a toxic exposure at DOE. The OWA accepted the Panel's determination, and the Applicant filed an appeal with the DOE's Office of Hearings and Appeals (OHA). As explained below, we have concluded that the appeal should be denied.

I. Background

A. The Energy Employees Occupational Illness Compensation Program Act

The Energy Employees Occupational Illness Compensation Program Act of 2000 as amended (the Act) concerns workers involved in various ways with the nation's atomic weapons program. See 42 U.S.C. §§ 7384, 7385. The Act provides for two programs, one of which is administered by the DOE. 1/

The DOE program is intended to aid DOE contractor employees in obtaining workers' compensation benefits under state law. Under the DOE program, an independent physician panel assesses whether a claimed illness or death arose out of and in the course of the

1/ The Department of Labor administers the other program. See 10 C.F.R. Part 30; www.dol.gov/esa.

worker's employment, and exposure to a toxic substance, at a DOE facility. 42 U.S.C. § 7385o(d)(3). 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 the claim. 42 U.S.C. § 7385o(e)(3). As the foregoing indicates, the DOE program itself does not provide any monetary or medical benefits.

To implement the program, the DOE has issued regulations, which are referred to as the Physician Panel Rule. 10 C.F.R. Part 852. The OWA is responsible for this program and has a web site that provides extensive information concerning the program. 2/

B. Procedural Background

The Applicant was employed as a pipe welder and inspector at DOE's Savannah River site. The Applicant was born in 1923, and he worked at the site for 30 years, from 1951 to 1981.

The Applicant filed an application with OWA, requesting physician panel review of four illnesses. They were asbestosis, prostate problems, coronary artery disease, and sternal osteomyelitis. The Applicant claimed exposure to asbestos, radiation, and other toxic substances. He attributed the sternal osteomyelitis to a 1965 exposure to reactor process water.

The Physician Panel rendered a determination on each of the four illnesses. The Panel rendered a positive determination on asbestosis, and negative determinations on the three remaining illnesses. For the claimed prostate problems, the Panel did not see any medical information indicating that the Applicant had problems. For the coronary artery disease, the Panel agreed that he had the illness, stated that it could not be related to any work exposure, and noted the presence of a risk factor - elevated lipids. For the sternal osteomyelitis, the Panel stated that it occurred in 2000, secondary to a sternotomy performed in connection with coronary artery bypass surgery. The Panel specifically rejected the Applicant's argument that the osteomyelitis was related to the cited 1965 incident.

2/ See www.eh.doe.gov/advocacy.

The OWA accepted the Physician Panel's determinations: the positive determination on asbestosis, as well as the negative determinations on prostate problems, coronary artery disease, and sternal osteomyelitis. See OWA February 20, 2004 Letter. The Applicant filed the instant appeal.

In his appeal, the Applicant maintains that the negative determinations are not correct. The Applicant states that he had toxic exposures during his employment at Savannah River, that his daughter, who laundered his work clothes from 1960 to 1965, died of cancer in 1999, and that he has no family history of two of the illnesses: prostate problems and sternal osteomyelitis.

II. Analysis

Under the Physician Panel Rule, independent physicians render an opinion whether a claimed illness is related to a toxic exposure during employment at DOE. The Rule requires that the panel address each claimed illness, make a finding whether that illness was related to a toxic exposure at DOE, and state the basis for that finding. 10 C.F.R. § 852.12.

We have not hesitated to remand an application where the panel report did not address all the claimed illnesses, 3/ applied the wrong standard, 4/ or failed to explain the basis of its determination. 5/ On the other hand, mere disagreements with the panel's opinion are not a basis for finding panel error.

In this case, the Applicant's arguments on appeal - that he had exposures and no family history of two of the three illnesses - are not bases for finding panel error. As mentioned above, the Physician Panel addressed each claimed illness, made a determination, and explained the basis of that determination. The Applicant's arguments are merely disagreements with the panel's medical judgment, rather than indications of panel error. Accordingly, the appeal does not provide a basis for finding panel error and, therefore, should be denied.

3/ *Worker Appeal*, Case No. TIA-0030, 28 DOE ¶ 80,310 (2003).

4/ *Worker Appeal*, Case No. TIA-0032, 28 DOE ¶ 80,322 (2004).

5/ *Id.*

IT IS THEREFORE ORDERED THAT:

- (1) The Appeal filed in Worker Advocacy Case No. TIA-0066 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: July 9, 2004