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September 17, 2004

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Appeal

Name of Case: Worker Appeal

Date of Filing: August 20, 2004

Case No.: TIA-0168

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 Worker 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 worker's employment, and exposure to a toxic substance, at a DOE facility. 42 U.S.C. § 7385(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

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

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 secretary at DOE's Oak Ridge site. The Worker worked at the site for 54 years, from 1944 to 1947 and from 1949 to 2000. Record at 9.

The Applicant filed an application with OWA, requesting physician panel review of one illness, breast cancer with metastasis to the left chest wall. The Applicant claimed that her illness was a result of working for many years in different buildings of the Oak Ridge site in which she may have been exposed to toxic substances. Record at 8.

The Physician Panel rendered a negative determination on the claimed breast cancer with metastasis to the left chest wall. The Panel agreed that the Applicant had the claimed illness but stated that the illness was not a result of a toxic exposure at DOE. Specifically, the Panel stated that although the Applicant worked in buildings where radioactivity was present and there was evidence of radioactivity detected via dosimeter and in her urine during the 1950's, there was insufficient evidence in the medical literature to establish a causal link between occupational radiation exposure as an adult and breast cancer. The Panel further stated that there are no reports of other workplace exposures involving secretarial duties that would suggest other workplace risk factors related to breast cancer.

The OWA accepted the Physician Panel's negative determination on the claimed breast cancer with metastasis to the left chest wall.

In her appeal, the Applicant maintains that the negative determination is incorrect. The Applicant contends that her illness was a result of her working for many years in different buildings at the Oak Ridge site. The Applicant also claims that for several years in the course of her duties, she walked back and forth between buildings alongside in-ground radioactive waste storage.

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

² See www.eh.doe.gov/advocacy.

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 argument on appeal—that her illness was a result of her working in various buildings at the Oak Ridge site—is not a basis for finding Panel error. As mentioned above, the Panel addressed the claimed illness of breast cancer with metastasis to the left chest wall, made a determination on the illness, and explained the basis of that determination. The Applicant's argument on appeal is merely a disagreement with the Panel's medical judgment, rather than an indication of Panel error. Accordingly, the appeal does not provide a basis for finding panel error and, therefore, should be denied.

IT IS THEREFORE ORDERED THAT:

- (1) The Appeal filed in Worker Advocacy Case No. TIA-0166 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: September 17, 2004

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.*

