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December 6, 2002  
DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

Name of Case: Worker Appeal  
Date of Filing: October 16, 2002  
Case No.: TIA-0004

XXXXXXXXXXXX (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 for her late husband, XXXXXXXXXXX (the worker). The DOE Office of Worker Advocacy determined that the worker was not a DOE contractor employee and, therefore, that the applicant was not eligible for the assistance program. The applicant appeals that determination. As explained below, we have concluded that the DOE Office of Worker Advocacy 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. Parts A and D of the Act provide benefits to certain workers.

Part A of the Act 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. § 73841(1).

Part D of the Act provides for a DOE program to assist "Department of Energy contractor employee[s]" 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/

Pursuant to an Executive Order, the DOE has published a list of facilities covered by the Act and has designated next to each facility whether it falls within the Act's definition of "atomic weapons employer facility," "beryllium vendor," or "Department of Energy facility." 66 Fed. Reg. 31,218 (June 11, 2001) (current list of facilities). 2/ The DOE's published list also refers to the DOE Office of Worker Advocacy web site for additional information about the facilities. 66 Fed. Reg. 31,219 (citing [www.eh.doe.gov/advocacy/faclist](http://www.eh.doe.gov/advocacy/faclist)).

This case concerns Part D of the Act, the portion of the Act that provides for DOE assistance to DOE contractor employees in filing for state workers' compensation benefits. Part D establishes a DOE process through which independent physician panels consider whether employee illnesses were caused by exposure to toxic substances at DOE facilities. If a physician panel issues a determination favorable to the employee, the DOE 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.

In her application for DOE assistance in filing for state workers' compensations benefits, the applicant stated that her late husband was an employee of the Linde Ceramics Plant. The DOE Office of Worker Advocacy determined that the worker was

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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, 2002), and a revised list in June 2001.

employed by an atomic weapons employer, not a DOE contractor. See September 12, 2002 Letter from DOE Office of Worker Advocacy to the applicant. Accordingly, the DOE Office of Worker Advocacy determined that the applicant was not eligible for DOE assistance in filing for state workers' compensation benefits. In her appeal, the applicant contests that determination. In connection with her appeal, the applicant states that the worker was employed at the Linde Ceramics Plant from March 8, 1943 to April 1, 1980.

## *II. Analysis*

### **A. Worker Programs**

As an initial matter, we address an apparent confusion about Part D assistance applications, i.e., applications for DOE assistance in filing for state workers' compensation benefits. A Part D assistance application is separate from an application for state workers' compensation benefits. A DOE decision that an applicant is not eligible for Part D assistance does not affect (i) an applicant's right to file for state workers' compensation benefits without DOE assistance or (ii) whether the applicant is eligible for state workers' compensation benefits under applicable state law. Thus, nothing in this decision affects either the applicant's right to file for state workers' compensation benefits or the applicant's eligibility for those benefits under state law.

Similarly, a Part D assistance application is separate from any claims made under other statutory provisions. Thus, nothing in this decision - which concerns Part D assistance under the EEOICPA - would affect the applicant's right to file a claim with the Department of Labor for federal monetary or medical benefits under Part A of the EEOICPA.

We now turn to whether the applicant is eligible for Part D assistance.

### **B. Whether the Applicant is Eligible for Part D Assistance**

The DOE's published list of facilities includes the Linde Ceramics Plant. The list designates the plant as "AWE" and

"DOE," the codes for "atomic weapons employer facility" and "DOE facility." 66 Fed. Reg. 31,222. The DOE Office of Worker Advocacy web site indicates that during World War II, the plant was part of Carbide and Carbon Chemical Corporation, later known as Union Carbide. 3/ The web site further indicates that plant was (i) an atomic weapons employer facility from 1940 until 1950, when the plant was placed on standby, and (ii) a DOE facility from 1996 to 1997, when remediation work was performed there on behalf of DOE. *Id.*

Based on the foregoing, the DOE Office of Worker Advocacy correctly concluded that the worker was not a DOE contractor employee. The worker's employment at the facility ended in 1980, long before the 1996 to 1997 period for which the plant is designated as a DOE facility.

Because the worker was not a DOE contractor employee, the applicant is not eligible for the Part D assistance program, i.e., DOE assistance in filing for state workers' compensation benefits. Again, we emphasize that this determination does not affect the applicant's eligibility for (i) state workers' compensation benefits or (ii) federal monetary and medical benefits available under other statutory provisions, including EEOIPCA claims at the Department of Labor.

IT IS THEREFORE ORDERED THAT:

- (1) The Appeal filed in Worker Advocacy, Case No. TIA-0004 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: December 6, 2002

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3/ See [www.eh.doe.gov/advocacy/faclist/showfacility.cfm](http://www.eh.doe.gov/advocacy/faclist/showfacility.cfm).