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January 7, 2004  
DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

*Appeal*

Name of Case: Worker Appeal  
Date of Filing: November 17, 2003  
Case No.: TIA-0034

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

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

the employee, the DOE Office of Worker Advocacy accepts the 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 Rocky Flats site in Golden, Colorado from 1977 through 1986. During that time, she worked as an analytical radioassay laboratory technician. In connection with her employment, she claims exposure to "high level radioactive substances." She believes that this exposure has caused her to suffer from chronic iritis in both eyes. The Physician Panel issued a negative determination on this claim. The Panel found as follows: "[the applicant's] conditions did not arise out of and in the course of employment by a DOE employer and exposure to a toxic material at a DOE facility." In this regard the Panel stated that there was "no medical or industrial hygiene record of any significant exposures to toxic chemicals, radiation or other possible causes for this ophthalmologic condition." The Panel noted that causes of the iritis are "varied and seldom identified. Clearly not occupational exposure related."

## II. Analysis

As noted above, the Physician Panel found that "[the applicant's] conditions did not arise out of and in the course of employment by a DOE employer and exposure to a toxic material at a DOE facility." Specifically, the Panel indicated that it considered whether it was at least as likely as not that exposure to a toxic substance at a DOE facility during the course of employment by a DOE contractor was a significant factor in aggravating, contributing to or causing the illness or death of the applicant. The Panel responded to this issue in the negative.

The applicant seeks review of this determination. She states that none of the physicians who have evaluated her condition have been able to explain the reasons for her disease. She believes that a possible cause of her iritis was her work with radioactive substances. However, other than stating this possibility, she provides no support for her contention. She has not provided, for example, a diagnosis from her own physician indicating that her condition was 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. While the record here indicates that the applicant was exposed to some toxic substances during her employment, there is no indication that the Panel failed to consider the exposure in reaching its determination that the applicant's iritis was not caused by any work-related toxic exposures at a DOE facility.

The applicant also questions why the three opinions issued by the Panel members in this case are identical. She implies that this might indicate some irregularity in the Panel's evaluation process. The applicant should be aware that if the Panel is unanimous in its determination, it issues a single opinion, which all members then sign. Section 852.12 states that the determination and findings must be signed by all Panel members. As a rule, each Panel member signs an identical, but separate, version of the determination. This is reasonable, inasmuch as the Panel members may reach their determination not in the presence of each other, but via telephone. See 10 C.F.R. § 852.11(b). Accordingly, it is appropriate that there are three identical Panel determinations in the record of this case. *Worker Appeal* (Case No. TIA-0025), 28 DOE ¶ 80,294 (June 30, 2003).

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-0034 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: January 7, 2004