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June 25, 2004
DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Name of Case: Worker Appeal
Date of Filing: March 23, 2004
Case No.: TIA-0065

XXXXXXXXXX (the applicant) applied to the Department of Energy (DOE) Office of Worker Advocacy for DOE assistance in filing for state workers' compensation benefits based on the employment of her late husband, XXXXXXXXXXX (the worker). The DOE Office of Worker Advocacy determined that the applicant was not a DOE contractor employee and, therefore, was not eligible for DOE assistance. The applicant appeals that determination. As explained below, we have concluded that the 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. The Act creates two programs for workers.

The Department of Labor (DOL) administers the first EEOICPA program, which 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. § 7384(1). The DOL program also provides federal monetary and medical benefits for uranium workers who receive a benefit from a program administered by the Department of Justice

(DOJ) under the Radiation Exposure Compensation Act (RECA) as amended, 42 U.S.C. § 2210 note. See 42 U.S.C. § 7384u.

The DOE administers the second EEOICPA program, which does not provide for monetary or medical benefits. Instead, the DOE program provides for an independent physician panel assessment of whether a "Department of Energy contractor employee" has an illness related to exposure to a toxic substance at a DOE facility. 42 U.S.C. § 7385o. 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).

The DOE program is specifically limited to DOE contractor employees who worked at DOE facilities. The reason is that the DOE would not be involved in state workers' compensation proceedings involving other employers.

The regulations for the DOE program are referred to as the Physician Panel Rule. 10 C.F.R. Part 852. 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, 2/ the DOE has published a list of facilities covered by the DOL and DOE programs, and the DOE has designated next to each facility whether it falls within the EEOICPA's definition of "atomic weapons employer facility," "beryllium vendor," or "Department of Energy facility." 68 Fed. Reg. 43,095 (July 21, 2003) (current list of facilities). The DOE's published list also refers readers to the DOE Worker Advocacy Office web site for additional information about the facilities. 68 Fed. Reg. 43,095.

This case involves the DOE program, i.e., the program through which DOE contractor employees may obtain independent physician panel

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

2/ See Executive Order No. 13,179 (December 7, 2000).

determinations that their illness is related to their exposure to a toxic substance during their employment at a DOE facility. The applicant states that her husband was an employee of the Linde Air Products Plant. The DOE Office of Worker Advocacy determined that the worker was employed by an atomic weapons employer, not a DOE contractor. See February 24, 2004 Letter from the 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 the appeal, the applicant disagrees with that determination.

II. Analysis

A. Worker Programs

As an initial matter, we emphasize that the DOE physician panel process is separate from state workers' compensation proceedings. A DOE decision that an applicant is not eligible for the DOE physician panel process does not affect (i) an applicant's right to file for state workers' compensation benefits or (ii) whether the applicant is eligible for those benefits under applicable state law.

Similarly, we emphasize that the DOE physician panel process is separate from any claims made under other statutory provisions. Thus, a DOE decision concerning the physician panel process does not affect any claims made under other statutory provisions, such as programs administered by DOL and DOJ.

We now turn to whether the applicant in this case is eligible for the physician panel process.

B. Whether the Applicant is Eligible for the DOE Physician Panel Process

As explained above, the DOE physician panel process is limited to DOE contractor employees. In order to be a DOE contractor employee, a worker must be employed by a firm that manages or provides other specified services at a DOE facility, and the worker must actually be employed at the DOE facility. The DOE's published list of facilities includes the Linde Air Products Plant, but does not list the plant as a DOE facility. Instead, the list designates

the plant as "AWE," the code for "atomic weapons employer 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. The web site further indicates that the plant was an atomic weapons employer facility from 1945-1947. Accordingly, the determination that the worker was not employed at a DOE facility is consistent with the DOE's published description of the worker's facility, and we have no reason to believe that the description is incorrect or incomplete.

Based on the foregoing, we have determined that the DOE Office of Worker Advocacy correctly concluded that the worker was not a DOE contractor employee. Because the worker was not a DOE contractor employee, the applicant is not eligible for 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 EEO/PCA claims at the Department of Labor.

IT IS THEREFORE ORDERED THAT:

- (1) The Appeal filed in Worker Advocacy, Case No. TIA-0065 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: June 25, 2004