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August 4, 2004

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Appeal

Name of Case: Worker Appeal

Date of Filing: April 28, 2004

Case No.: TIA-0092

XXXXXXXXXXXXX (the Applicant) applied to the Office of Worker Advocacy (OWA) of the Department of Energy (DOE) for assistance in filing for state workers' compensation benefits. The Applicant was a DOE contractor employee, and he claims that he has two illnesses that are a result of exposure to toxic substances at a DOE facility. An independent physician panel (the Physician Panel) rendered a positive determination on one illness and a negative determination on the other. The OWA accepted the Physician Panel's determination, and the Applicant appealed the negative determination to the DOE's Office of Hearings and Appeals. As explained below, we have concluded that the appeal should be denied.

I. Background

A. The Applicable Statute and Regulations

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. § 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.

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

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. The Application

The Applicant worked at a DOE facility from 1970 to 1994, as an assistant production operator, a production operator, a janitor, a guard and a security inspector. In connection with his employment, he claims exposure to uranium and other hazardous substances. He believes that this exposure has caused him to suffer from optic neuritis.³

The OWA referred the application to a Physician Panel, and the Physician Panel's determinations are reflected in a March 2004 report. The Panel found that the Applicant had worked with uranium, worked in buildings that were contaminated with mercury, and been exposed to other hazardous substances such as paint and paint thinners, dust and beryllium. With regard to his optic neuritis, however, the Panel concluded as follows: "[The Applicant] was diagnosed as having papilledema and papillitis in 1994. This condition is unlikely to have been caused by exposure to toxins during his employment. This panel finds no association between his employment and the claimed condition." The OWA accepted the Physician Panel's determinations with regard to both illnesses. The Applicant does not wish to dispute the positive determination on breathing problems, but does appeal the Physician Panel's determination about optic neuritis.

II. Analysis

Under the Physician Panel Rule, independent physicians render an opinion whether a claimed illness claimed "arose out of and in the course of employment" by a DOE contractor and "exposure to a toxic substance at a DOE facility." 10 C.F.R. § 852.8. The Rule instructs the Panel to make that determination by deciding whether it is "as least as likely as not" that exposure to a toxin at the facility was a significant factor in aggravating, contributing to, or causing the illness. *Id.* The Rule requires that the Physician Panel (i) make a finding whether that illness was related to a toxic exposure at DOE and (ii) state the basis for that finding. 10 C.F.R. § 852.12.

We have not hesitated to remand an application where we have found Physician Panel error. For example, we have remanded applications where the Physician Panel report did not address all the claimed illnesses,⁴ applied the wrong standard,⁵ or failed to explain the basis of its

² See www.eh.doe.gov/advocacy.

³ He also claimed that the exposure caused him to suffer from breathing problems, and the Physician Panel rendered a positive determination for that condition.

⁴ *Worker Appeal*, Case No. TIA-0030, 28 DOE ¶ 80,310 (2003).

determination.⁶ On the other hand, mere disagreements with the Physician Panel's opinion do not indicate panel error.⁷

As noted above, the Physician Panel found that "[the Applicant's optic neuritis] is unlikely to have been caused by exposure to toxins during his employment." It found no connection at all between the toxic substances to which the applicant was exposed during his employment at Oak Ridge and his optic neuritis. The applicant seeks review of this determination. He has not identified any specific error on the part of the Physician Panel. The Physician Panel's report indicates that the Physician Panel considered the record thoroughly. The report details the Applicant's exposure or possible exposure to numerous hazardous substances. Consequently, we find that the Physician Panel fully considered the exposure when it employed its medical judgment in reaching its determination that the applicant's optic neuritis was not caused by any work-related toxic exposures at a DOE facility.

Because the Physician Panel's report demonstrates its consideration of the Applicant's exposure to all the hazardous substances listed in his application and the exercise of its medical judgment on those facts, we find no error in the Physician Panel's determination. Accordingly, the appeal should be denied.

IT IS THEREFORE ORDERED THAT:

- (1) The Appeal filed in Worker Advocacy Case No. TIA-0092 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: August4, 2004

⁵ *Worker Appeal*, Case No. TIA-0032, 28 DOE ¶ 80,322 (2004).

⁶ *Id.*

⁷ *Worker Appeal*, Case No. TIA-0066, 28 DOE ¶ _____ (July 9, 2004).