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September 27, 2004

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

Name of Case: Worker Appeal

Date of Filing: May 21, 2004

Case No.: TIA-0099

XXXXXXXXXXXXXXXXX (the applicant) applied to the Department of Energy (DOE) Office of Worker Advocacy for assistance in filing for state workers' compensation benefits based on her employment at the Sequoyah Fuels Corporation in Gore, Oklahoma. The DOE Office of Worker Advocacy determined that the applicant was not a DOE contractor employee under the regulations at issue here 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. § 73841(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. § 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<sup>1</sup> who worked at DOE facilities.<sup>2</sup> 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 and are set forth at 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.<sup>3</sup>

Pursuant to an Executive Order,<sup>4</sup> 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." 69 Fed. Reg. 51,825 (August 23, 2004) (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. 69 Fed. Reg. 51,825.

## **II. The Appeal**

This case involves the program administered by the DOE that provides access for eligible DOE contractor employees or their survivors to a Physicians Panel Process. The Physicians Panel established under the EEOICPA determines the validity of claims that a current or former DOE contractor employee's illness or death arose from his or her exposure to a toxic substance during the course of his or her employment at a DOE facility.

In the case at hand, the DOE Worker Advocacy Office declined to present the applicant's application to a Physicians Panel because the office determined that the applicant did not meet the eligibility requirements for the Physicians Panel Process. *See* April 29, 2004 letter from the DOE Worker Advocacy Office to the applicant.

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<sup>1</sup> A DOE contractor is defined as follows: (a) an individual who is or was in residence at a DOE facility as a researcher for one or more periods aggregating at least 24 months; (b) an individual who is or was employed at a DOE facility by (i) an entity that contracted with DOE to provide management and operation, management and integration, or environmental remediation at the facility; or (ii) a contractor or subcontractor that provided services, including construction and maintenance, at the facility. 10 C.F.R. § 852.2.

<sup>2</sup> A DOE facility is defined as: any building, structure or premise, including the grounds upon which such building, structure, or premise is located: (a) in which operations are, or have been, conducted by, or on behalf of the DOE (except for buildings, structures, premises, grounds, or operations covered by Executive Order No. 12344 dated February 1, 1982 (42 U.S.C. § 7158 note), pertaining to Naval Nuclear Propulsion Program); and (b) with regard to which DOE has or had (i) a propriety interest; or (ii) entered into a contract with an entity to provide management and operation, management and integration, environmental remediation services, construction, or maintenance services. 10 C.F.R. § 852.2.

<sup>3</sup> *See* [www.eh.doe.gov/advocacy](http://www.eh.doe.gov/advocacy).

<sup>4</sup> *See* Executive Order No. 13,179 (December 7, 2000).

In her appeal, the applicant states that she worked at the Sequoyah Fuels Corporation in Gore, Oklahoma (hereinafter referred to as “Sequoyah”) from June 1978 through November 1992. According to the applicant, she was exposed twice to toxic substances during her employment at Sequoyah, *i.e.*, 1986 and 1992, when uranium hexafluoride was accidentally released into the company’s ventilation system.<sup>5</sup> She believes that these chemical exposures caused her to develop asthma with diminished lung capacity, and other medical conditions. The applicant claims that Sequoyah processed uranium hexafluoride for the DOE and, for this reason, she should be able to use the DOE Physician Panel Process.

### III. Analysis

As noted above, access to the DOE Physician Panel is limited to applications filed by or on behalf of a DOE contractor employee who is or was employed at a DOE facility. *See* 10 C.F.R. § 852.1(b). To determine whether the worker in question was a DOE contractor who worked at a DOE facility, we first consulted the DOE’s published facilities list set forth at 69 Fed. Reg. 51,825. We discovered that Sequoyah is not listed on the published facilities list. Second, we searched for but were unable to locate any information to suggest that Sequoyah was ever a DOE contractor. For example, the company did not do research for one or more periods aggregating at least 24 months; it did not contract with DOE to provide management and operation, management and integration, or environmental remediation at the facility; or provide any services, including construction and maintenance, to the DOE at the facility. 10 C.F.R. § 852.2. Furthermore, we found no evidence that Sequoyah was ever a DOE facility. None of Sequoyah’s buildings, structures or premises, including the grounds upon which its buildings, structures, or premises were located, were operated or conducted by, or on behalf of the DOE. Moreover, the DOE never had a propriety interest in Sequoyah. Lastly, we found no information that the DOE ever entered into a contract with Sequoyah to provide management and operation, management and integration, environmental remediation services, construction, or maintenance services for the agency. 10 C.F.R. § 852.2.<sup>6</sup>

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<sup>5</sup> Uranium Hexafluoride is the chemical form of uranium that is used in the uranium enrichment process. *See* [www.ead.anl.gov/uraniumguide/ucompound/forms](http://www.ead.anl.gov/uraniumguide/ucompound/forms).

<sup>6</sup> The Office of Worker Advocacy advised this Office that Sequoyah did provide materials to the Paducah Gaseous Diffusion Plant and the Portsmouth Gaseous Diffusion Plant, two plants owned by the Department of Energy and leased and operated by the United States Enrichment Corporation. *See* Electronic Mail Message dated September 20, 2004 from Karoline Anders, Office of Worker Advocacy to Janet Freimuth, Office of Hearings and Appeals. However, providing materials to these two plants is not sufficient for Sequoyah to come within the specific EEOICPA definitions of DOE contractor and DOE facility.

As an aside, we inquired about Sequoyah’s possible designation as an “Atomic Weapons Employer” (AWE) to ascertain whether the applicant might be able to avail herself of other statutory programs such as the ones administered by the Department of Labor and the Department of Justice. The Office of Worker Advocacy informed this Office that Sequoyah provided materials to the Paducah and Portsmouth Gaseous Diffusion Plants after those two locations changed their mission from producing material that was used in the production of atomic weapons. Hence, Sequoyah also cannot be considered an AWE under the EEOICPA.

Based on all the foregoing, we find that the Office of Worker Advocacy correctly determined that the applicant was not a DOE contractor employee who worked at a DOE facility.

IT IS THEREFORE ORDERED THAT:

- (1) The Appeal filed in Worker Advocacy Case No. TIA-0099 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 27, 2004