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September 30, 2004

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

**Appeal**

Name of Case: Worker Appeal  
Date of Filing: July 13, 2004  
Case No.: TIA-0137

XXXXXXXXXXXX (the Applicant) applied to the Department of Energy (DOE) Office of Worker Advocacy (OWA) for assistance in filing for state workers' compensation benefits based on his employment as a DOE contractor employee at a DOE facility for many years. The OWA referred the application to an independent physician panel, which determined that the Applicant's illnesses were not related to his work at DOE. The OWA accepted the panel's determination, and the Applicant filed an appeal with the DOE's Office of Hearings and Appeals (OHA), challenging the panel's determination.

***I. Background***

*A. The Energy Employees Occupational Illness Compensation Program Act*

The Energy Employees Occupational Illness Compensation Program Act of 2000 as amended (the Act) covers 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 does not itself provide any monetary or medical benefits but instead is intended to assist DOE contractor employees in obtaining workers' compensation benefits under state law. Pursuant to Part D, 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). 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.<sup>1</sup>

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<sup>1</sup> *See* [www.eh.doe.gov/advocacy](http://www.eh.doe.gov/advocacy).

### *B. Factual Background*

The Applicant was employed at a DOE facility from 1971 to 2003. He was an Instrument Mechanic and has claimed that he was exposed to radiation and radioactive contaminants, beryllium and other toxic chemicals while working at the DOE facility. In the request for review, the Applicant asked for a physician panel review concerning whether his “allergies,” “asthma” and “kidney stones” are related to his various exposures at DOE. *See* Case No. TIA-0137 Record (Record) at 1.

The physician panel reviewed the application and issued a report. *See* April 24, 2004 Physician Panel Report (Report) contained in Applicant’s Appeal Letter dated July 7, 2004. With regard to the Applicant’s allergies, the panel stated in its Report that the Applicant’s pre-employment physical noted that the Applicant had a history of allergies. The panel also stated that the Applicant’s medical records indicated that he had suffered from allergic rhinitis. Further, the panel opined that there was no evidence that his exposures at his work site were related to his histories of “atopy” or that his allergies were aggravated by his employment.<sup>2</sup>

In reviewing the Applicant’s claim with regard to his asthma, the panel noted that he had a pre-existing history of asthma and that given his concurrent history of allergies the Applicant most likely suffered from “allergic asthma.” The panel stated that the available pulmonary function tests contained in the record were normal and did not show any evidence of pulmonary obstruction. Other than some episodes of “asthmatic bronchitis,” there was no evidence that the Applicant suffered from episodes of asthma or that he had been absent from work due to asthma. The panel did not find any evidence of work-aggravated asthma. Lastly, the panel found that the Applicant’s kidney stones were not related to exposure to a toxic substance at a DOE facility. The panel stated that it found no evidence indicating that there was a causal relationship between exposure to toxic substances and kidney stones.<sup>3</sup>

The OWA accepted the physician panel’s determination, and the OWA advised the Applicant that he had received a negative determination. *See* Applicant’s Appeal Letter dated July 7, 2004. On July 13, 2004, the Applicant filed this appeal concerning the determination.

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<sup>2</sup> “Atopy” refers to various allergic reactions.

<sup>3</sup> In the Report, the panel noted that kidney stones are usually found in men and result from problems in an individual’s purine (a class of chemicals found in various foods) metabolism which results in increased production of uric acid in the body. The Report also stated that a diet high in purines could predispose an individual to kidney stones and that the disease was more common in white collar workers than in manual workers.

The Applicant believes that the Panel's determination is flawed because it did not consider the specific types of allergic reactions he experienced – skin rashes, boils and other skin problems he believes were caused by 33 years of exposure to many types of toxic materials at the DOE site. The Applicant also challenges the panel's determination with regard to asthma. Specifically, while he agrees that he did not have asthma attacks during his period of employment, the Applicant claims that he suffered from a number of respiratory problems such as bronchitis, "early stage" emphysema, shortness of breath and coughing, which were not reviewed by the panel.

Lastly, the Applicant challenges the panel's determination concerning his kidney stones. He asserts that an abnormally large number of individuals who worked his DOE facility suffered from kidney stones. He also notes that since he has retired he has not had any further kidney stones.

## **II. Analysis**

The Applicant believes that the panel's decision concerning his "asthma" and "allergies" is flawed because the panel did not consider the specific illnesses he listed in his appeal letter. We examined the form on which the Applicant requested physician panel review. In answering question 7, which asks "what illness(es) do you have that you believe is caused by your work at a DOE facility(s)," the Applicant's response was "allergies" and "asthma." Record at 1. It is apparent that the Applicant did not specifically identify the particular illnesses for which he sought review. This is significant especially since apparently the term "allergies" could refer to a number of conditions. The panel seems to have interpreted the Applicant's request as a request for review of his allergic rhinitis. Thus, the panel only conducted a review for "allergic rhinitis" and asthma.<sup>4</sup> Given the named illnesses the Applicant specified in his request, we find no error in the panel's determination. However, if the Applicant wishes to obtain panel review on the specific illnesses has mentioned in his appeal, he can file another request for review with the Office of Worker Advocacy.

With regard to the Applicant's arguments concerning the panel's findings concerning his kidney stones, we again find no error in the panel's findings. The Applicant's arguments concerning coextensive duration of his employment at the DOE facility and the occurrence of his kidney stones and the allegedly higher rate of individuals suffering from kidney stones at the facility does not outweigh the considered medical opinions of the panel's physicians. The Applicant has not pointed out, for example, (i) any mistake in fact that the panel made or (ii) other expert medical opinions in the record that would support his claim. Consequently, we must reject the Applicant's arguments.

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<sup>4</sup> "Allergic rhinitis" refers to the illness commonly called "hay fever" and is marked by an allergy-related inflammation of the nasal passages.

### *III. Conclusion*

In its review, the panel examined the available medical records and determined that the Applicant's asthma, allergies and kidney stones were not caused by his exposures to toxic materials at a DOE facility. None of the arguments that the Applicant has presented indicates panel error. Consequently, as the foregoing discussion indicates, the Applicant's appeal should be denied.

IT IS THEREFORE ORDERED THAT:

- (1) The Appeal filed in Worker Advocacy Case No. TIA-0137 is hereby denied.
- (2) This is a final order of the Department of Energy.

George B. Breznay  
Director  
Office of Hearings and Appeals

Date: September 30, 2004