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September 17, 2004

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Appeal

Name of Case: Worker Appeal

Date of Filing: August 18, 2004

Case No.: TIA-0166

XXXXXXXXXX (the Applicant) applied to the Department of Energy (DOE) Office of Worker Advocacy (OWA) for assistance in filing for state workers' compensation benefits. The Applicant's late husband (the Worker) was a DOE contractor employee at a DOE facility. An independent physician panel (the Physician Panel or the Panel) found that the Worker did not have an illness related to a toxic exposure 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). As explained below, we have concluded that the appeal should be denied.

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) 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. § 7385(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

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

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.

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. Procedural Background

The Worker was employed as a laboratory attendant at DOE's Oak Ridge site. The Worker worked at the site for 15 years, from 1961 to 1976. Record at 8.

The Applicant filed an application with OWA, requesting physician panel review of one illness, myocardiorathy. The Applicant claimed that her late husband's illness was a result of his duties involving the care and feeding of animals used in radiation and chemical exposure experiments. Record at 8.

The Physician Panel rendered a negative determination on the claimed myocardiorathy. The Panel agreed that the Worker had cardiac valvular disease, but stated that the disease is not work related and is not considered an occupational disease.

The OWA accepted the Physician Panel's negative determination on the myocardiorathy.

In her appeal, the Applicant maintains that the negative determination is incorrect. The Applicant contends that her late husband's illness is a result of his caring for animals used in radiation and chemical exposure experiments at the Oak Ridge site. The Applicant also claims that she has no knowledge of her late husband having cardiac disease before he began working at the Oak Ridge site.

II. Analysis

Under the Physician Panel Rule, independent physicians render an opinion whether a claimed illness is related to a toxic exposure during employment at DOE. The Rule requires that the Panel address each claimed illness, make a finding whether that illness was related to a toxic exposure at DOE, and state the basis for that finding. 10 C.F.R. § 852.12.

We have not hesitated to remand an application where the Panel report did not address all the claimed illnesses,³ applied the wrong

² See www.eh.doe.gov/advocacy.

³ *Worker Appeal*, Case No. TIA-0030, 28 DOE ¶ 80,310 (2003).

standard,⁴ or failed to explain the basis of its determination.⁵ On the other hand, mere disagreements with the Panel's opinion are not a basis for finding Panel error.

In this case, the Applicant's argument on appeal—that her late husband's illness was a result of his caring for animals at the Oak Ridge site—is not a basis for finding Panel error. As mentioned above, the Panel addressed the claimed illness of cardiomyopathy, made a determination on the illness, and explained the basis of that determination—that cardiac valvular disease is not an occupational illness. The Applicant's argument on appeal is merely a disagreement with the Panel's medical judgment, rather than an indication of Panel error. Accordingly, the appeal does not provide a basis for finding panel error and, therefore, should be denied.

IT IS THEREFORE ORDERED THAT:

- (1) The Appeal filed in Worker Advocacy Case No. TIA-0166 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 17, 2004

⁴*Worker Appeal*, Case No. TIA-0032, 28 DOE ¶ 80,322 (2004).

⁵*Id.*