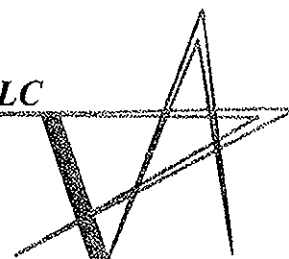


**COMMONWEALTH ENVIRONMENTAL SERVICES, LLC**

"A Native American - Woman Owned Company"



## Fax Cover Sheet

To:	Senator Rand Paul, Senator Mitch McConnell Congressman Ed Whitfield	From:	Gary S. Vander Boegh
Fax:	(202) 228-6917 (202) 224-2499 (202) 225-3547	Date:	4/08/11
Phone:	(270) 450-0850	Pages:	_____ Pages including the Cover Sheet
Re:	Ezra Freeman File: xxx-xx-8803	CC:	

Urgent    For Review    Please Comment    Please Reply    Please Recycle

Please see the attached request for help and release.

Please contact me on my cell at (270) 559-1752 if you have any questions.

Thanks,

Gary

PRIVACY RELEASE FORM

3/17/11  
date

PLEASE RETURN THIS FORM TO:

Senator Mitch McConnell  
601 West Broadway, Room 630  
Louisville, Kentucky 40202  
Fax 502-582-5326

Senator Rand Paul  
Fax 202-228-6917

TO WHOM IT MAY CONCERN:

I am aware that the Privacy Act of 1974 prohibits the release of information in my file without my approval.

I authorize the Department of Labor  
name of Federal agency or department

to provide information on my claim/case to ~~Senator McConnell~~ Senator Paul or his staff representative designated by him.

This authorization is good until such time as a final decision is made on my case and there is no further administrative appeal available to me.

Lynda L. Freeman  
signature

128 New Liberty Church Rd. Apt 104

Kevil, KY 42053  
address

270-462-8803  
telephone number

social security number

405-18-4428  
claim number (if any)

date of birth

If you wish information provided to parent, child, attorney, or other interested party, please indicate below.

I authorize Gary S. Vander Boegh  
to receive information from ~~Senator McConnell~~ Senator Paul or his staff representative designated by him relative to my claim/case.

Signature Lynda L. Freeman

Lynda Freeman

0051

U.S. Department of Labor

Office of Workers Compensation Programs  
Division of Energy Employees Compensation  
400 West Bay Street, Suite 722  
Jacksonville, FL 32202



April 15, 2011

File Number: XXX-XX-4428

Mr. Gary Vander Boegh  
Authorized Representative  
Commonwealth Environmental Services, LLC  
4645 Village Square Drive, St. F  
Paducah, KY 42001

RECEIVED  
4-22-11

Dear Mr. Vander Boegh:

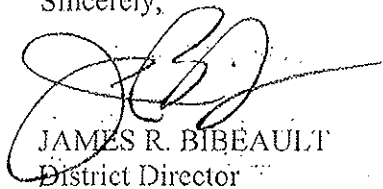
This is to confirm receipt of your letter received in this office on April 8, 2011, requesting to reopen this claim filed under the Energy Employees Occupational Illness Compensation Program.

The regulations governing the Act defined under 20 C.F.R. § 30.320(b) state that the evidence required to support a reopening request are as follows: new evidence of either covered employment or exposure to a toxic substance, radiation, beryllium or silica; or identification of either a change in the probability of causation guidelines, a change in the dose reconstruction methods, or an addition of a class of employees to the Special Exposure Cohort (SEC).

Your request, along with any information you may have submitted, will be carefully considered prior to issuing a decision. If we find that additional development may be necessary in order to come to a decision, we will undertake those actions to assist you with your request. If we cannot determine whether the evidence submitted, and/or the change in law, regulations, or policies identified in your request is sufficient to warrant a reopening, or if your request presents complex issues not previously addressed by the DEEOIC, your reopening request may be referred to our National Office for review and consideration. Once a review of your request has been completed, you will be provided a decision by this office or our National Office outlining the reasons for granting or not granting a reopening of your claim.

If you have any questions concerning your request to reopen your claim, please contact this office; toll free, at 877-336-4272.

Sincerely,



JAMES R. BIBEAULT  
District Director

cc: Ms. Lynda L. Freeman

51.

**U.S. DEPARTMENT OF LABOR**

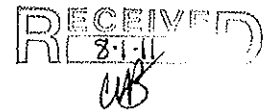
Office Of Workers Compensation Programs  
Division of Energy Employees Compensation  
400 West Bay Street, Suite 722  
Jacksonville, FL 32202  
Phone: (877) 336-4272 or (904) 357-4705  
Fax: (904) 357-4704



July 28, 2011

File: XXXXX4428

Gary S. Vander Boegh  
Commonwealth Environmental Services, LLC  
4645 Village Square Drive, ST. F  
Paducah, Kentucky 42001



Dear Mr. Vander Boegh:

A copy of the attached correspondence has been sent to Ms. Lynda L. Freeman. Our records reflect that you are the designated authorized representative for this claim for benefits under the Energy Employees Occupational Illness Compensation Program Act.

If you have any questions or concerns regarding this correspondence, it is requested that you first discuss the matter with Ms. Freeman. Questions or specific concerns may be addressed to the Jacksonville District Office at 1-877 336-4272.

Sincerely,

A handwritten signature in black ink that reads "Matthew Gile".

MATHEW GILE  
Claims Examiner

U.S. Department of Labor

Office of Workers Compensation Programs  
Division of Energy Employees Compensation  
400 West Bay Street, Suite 722  
Jacksonville, FL 32202



July 28, 2011

Lynda L. Freeman  
3058 Monkey's Eyebrow Road  
LA Center, KY 42056

Dear Ms. Freeman:

I am writing in reference to your claim for survivor's benefits under Part B of the Energy Employees Occupational Illness Compensation Program Act (the Act).

On August 10, 2009, the Final Adjudication Branch (FAB) issued a final decision to deny your claim for Chronic Beryllium Disease (CBD) under Part B because the evidence of record did not establish that the employee, Mr. Ezra A. Freeman, was diagnosed with the claimed illness of CBD in accordance with the Act.

The regulations provide that a claimant may file a written request that the Director of the Division of Energy Employees Occupational Illness Compensation (DEEOIC) reopen his/her claim. The decision whether or not to reopen a claim under this section is solely within the discretion of the Director. The Director has delegated the authority to review and issue determinations for certain claims to the District Director having jurisdictional authority over the case.

On April 5, 2011, your authorized representative - Gary S. Vander Boegh, requested reopening of your claim for benefits under Part B of the Act. I have reviewed the request along with the evidence on file and find that your case is not in posture for reopening at this time. The attached Denial of Reopening Request provides further explanation of why there is insufficient basis to warrant reopening.

If you have any questions about this Denial of Reopening Request, you may contact the Jacksonville District Office at 1-877-336-4272.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Bibeault".

JAMES BIBEAULT  
District Director, DEEOIC  
Jacksonville, FL

cc: Gary S. Vander Boegh ✓

July 28, 2011

**EMPLOYEE:** Ezra A. Freeman  
**CLAIMANT:** Lynda L. Freeman  
**FILE NUMBER:** XXXXX4428  
**DOCKET NUMBER(S):** 40269-2006

### **DENIAL OF REOPENING REQUEST**

The Energy Employees Occupational Illness Compensation Program Act (EEOICPA or the Act) regulations provide that a claimant may file a written request that the Director of the Division of Energy Employees Occupational Illness Compensation (DEEOIC) reopen his/her claim. The regulations state that in order to support the request to reopen, a claimant must submit evidence of either covered employment or exposure to a toxic substance, or identify either a change in the probability of causation guidelines, a change in the dose reconstruction methods or an addition of a class of employees to the Special Exposure Cohort (SEC). The decision whether or not to reopen a claim under this section is solely within the discretion of the Director. The Director, DEEOIC has delegated the authority to review and issue a determination in certain cases to the District Director having jurisdictional authority over the case.

For the reasons set forth below, the request to vacate the August 10, 2009 Part B Final Decision of the Final Adjudication Branch (FAB) is denied.

### **BACKGROUND**

The evidence of record shows that Lynda L. Freeman filed claims for survivor's benefits under the EEOICPA. It was claimed that her father, Ezra A. Freeman developed lung cancer, emphysema, and chronic beryllium disease (CBD) as the result of his employment as a laborer and electrician at the Paducah Gaseous Diffusion Plant (GDP) in Paducah, Kentucky.

A copy of the death certificate received by the District Office on January 13, 2003 confirms that Mr. Freeman passed away on August 5, 1991.

Documentation confirms employment at the Paducah GDP from July 1, 1951 to December 31, 1951; and, from October 1, 1953 to December 31, 1953.

Medical records established a diagnosis of lung cancer.

Records were submitted that established Mr. Freeman was widowed at the time of his passing and that the claimant is a surviving child of the employee.

The case was evaluated to determine if the employee qualified under the SEC provision of the Act as it applied to the Paducah site. It was determined the employee was diagnosed with a specified cancer as identified under the SEC; however employment was found to not meet the requisite 250 work day requirement. Therefore, the case was referred to the National Institute for Occupational Safety and Health (NIOSH) for the required radiation dose reconstruction and determination as to the likelihood the cancer(s) were the result of radiation exposure incurred during employment at a covered DOE facility.

On January 21, 2003, the District Office recommended denial of Ms. Freeman's claim for benefits under Part B of the Act because the condition of emphysema was not a covered occupational illness as provided for under that part of the Act.

On December 28, 2005, the District Office recommended denial of the claim for benefits for lung cancer based on a completed report of radiation dose reconstruction as completed by NIOSH. After calculation of the probability of causation (PoC), it was determined the PoC did not meet the "at least as likely as not" (a 50% or greater probability) threshold required under the Act that the cancer was caused by exposure to radiation incurred during employment at a covered DOE facility.

On February 14, 2006, an objection and request for review of the Recommended Decision was received by the Final Adjudication Branch (FAB). On May 1, 2006, the FAB issued a Final Decision and Review of the Written Record denying Ms. Freeman's claim for lung cancer under Part B of the Act since the PoC for the lung cancer did not meet the "at least as likely as not" threshold.

By letter dated May 28, 2006, a request for reconsideration of the FAB Final decision was received. On June 27, 2006, the FAB denied Ms. Freeman's request for reconsideration; she had not submitted any argument or evidence that would justify reconsideration.

In an October 29, 2007 Final Decision, the FAB denied Ms. Freeman's survivor's claim for the condition of CBD under Part B of the Act. The evidence of record was insufficient to establish a diagnosis of chronic beryllium disease (CBD) using the pre January 1993 criteria.

On February 8, 2008, the District Office received additional medical evidence from Ms. Freeman. The evidence was compelling enough to warrant a reopening of the claim. On June 30, 2008, a Director's Order was issued vacating the Final Decision dated October 29, 2007 for the condition of CBD, based upon the receipt of new medical evidence.

On January 29, 2009, the District Office issued a Recommended Decision to deny Ms. Freeman's claim for CBD under Part B of the Act. Evidence showed that Mr. Freeman met only two of the necessary three criteria for a pre-1993 diagnosis of CBD.

In a letter dated February 9, 2009, Ms. Freeman objected to the January 29, 2009 Recommended Decision and requested an oral hearing. On August 10, 2009, the FAB issued a Final Decision Following a Hearing. The FAB denied Ms. Freeman's claim for CBD under Part B of the Act

because the medical evidence submitted was insufficient to support a diagnosis of CBD within the meaning of the Act.

In a facsimile received on September 9, 2009, Ms. Freeman's Authorized Representative (AR), Gary S. Vander Boegh, submitted a request for reconsideration of the Final Decision dated August 10, 2009. On October 21, 2009, the FAB denied the request for reconsideration. No new evidence was submitted that would have changed the August 10, 2009 Final Decision.

On April 8, 2011, a request for reopening of the CBD claim was received. Ms. Freeman's AR indicated the documentation submitted with the request is sufficient to support "new exposure information" and documentation meeting four of the five criteria for pre 1993 CBD under the Act. The evidence consisted of a 7-page letter and attachments totaling an additional eight pages. Specifically:

- A 7 page letter with information that includes:
  - A statement where Commonwealth Environmental Services, LLC (which the AR is the Vice President) presented evidence to the Paducah Citizen's Advisory Board (CAB) that "confirmed" the presence of radioactive beryllium from nuclear reactor fuel received from Hanford, Washington. The AR also indicates . . . "the claimant now provides 'new evidence of toxic chemical (radioactive beryllium) exposure in support of her pre-1993 CBD criteria'".
  - The Pre-1993 CBD criteria that is required under the Act.
  - Excerpts of a prior DOL case decision precedent.
  - The AR's opinion that the employee meets four of the five "Pre-1993 CBD criteria" citing medical evidence previously submitted.
- Five pages of a copy of a District Medical Consultant (DMC) report dated December 17, 2008.
- Two pages of a copy of "Statement of the Facts" that lists medical evidence contained in Mr. Freeman's file completed that was used as supporting information for the DMC report of December 17, 2008.
- 1 page statement signed by Robert Jessing, Building supervisor dated August 24, 2008, referring to a Mr. Green (no relation to this case), and a potential of beryllium exposure for Mr. Green in "c 340" building.

## **DISCUSSION**

After a careful assessment of the case record, I have concluded there is insufficient evidence to warrant reopening of Ms. Freeman's claim for survivor benefits. My determinations for this decision are based on the following facts:

To establish a diagnosis of CBD, the Act provides for the use of two separate criteria that are dependent on the medical history of the employee as it relates to their pulmonary health when evaluating claims for the condition of CBD. Essentially, the Act permits assessment using the two criteria based on a diagnosis established prior to or post January 1, 1993.

The employee passed prior to January 1, 1993, therefore the use of post 1993 criteria is not appropriate. Consequently, the medical record was evaluated to determine if there was sufficient evidence to satisfy the statutory requirements set forth under the Act for establishing a diagnosis for CBD.

As defined in the Federal (EEOICPA) Procedure Manual (PM) at 2-1000.6, to establish a statutory diagnosis of CBD based on pre-1993 criteria, medical documentation in the case file must include at least three of the following five criteria:

1. Characteristic chest radiographic (or computed tomography (CT)) abnormalities: A portable chest x-ray (CXR) dated July 2, 1988 identifies interstitial lung disease with what appeared to be basilar fibrosis. A CT report dated January 2, 1991 did not identify these findings. Because CT technology is much better than portable films and standard conventional chest x-ray and later reports did not again identify these same findings, the images identified by the portable CXR of July 2, 1988 are not found as consistent. There were numerous CXR's and CT reports of the chest dating from 1986 through 1991; however there were no findings identified which were characteristic of CBD based on the pre-1993 statutory criteria.

As stipulated in the Federal EEOICPA) PM at 2-1000.6a-c, the evidence submitted does not meet this criteria.

2. A restrictive or obstructive lung physiology testing or diffusing lung capacity defect: Pulmonary function test (PFT) dated May 3, 1988 establishes moderate to severe obstructive defect.

As stipulated in the Federal (EEOICA) PM at 2-1000.6d, the evidence submitted meets this criterion.

3. Lung pathology consistent with CBD: The record identifies at least two fiberoptic bronchoscopies were performed; 1989 and 1991. The findings of these procedures did not produce any pathology that was interpreted medically as being consistent with CBD

As stipulated in the Federal (EEOICA) PM at 2-1000.6f, the evidence submitted does not meet this criterion.

4. A clinical course consistent with a chronic respiratory disorder: The medical evidence of record clearly denotes that Mr. Freeman suffered from a chronic respiratory disorder (chronic obstructive pulmonary disease) as early as May 5, 1988.

As stipulated in the Federal (EEOICA) PM at 2-1000.6g, the evidence submitted meets this criterion.

5. Immunologic tests showing beryllium sensitivity (e.g., skin patch test or beryllium blood test preferred). There was no evidence of any immunologic tests showing beryllium

sensitivity (e.g., skin patch test or beryllium blood test preferred), therefore, this criteria was not satisfied.

As stipulated in the Federal (EEOICA) PM at 2-1000.6h, the evidence submitted does not meet this criterion.

With regard to evidence submitted by the claimant, the following is determined:

As is noted, the medical evidence of record establishes only two of the five statutory criteria set for a statutory diagnosis for CBD. This is less than the requisite three or more criteria as required under the Act.

The District Office does not consider the one page statement signed by Mr. Jessing as evidence of a new exposure. Under the Federal (EEOICPA) Procedure Manual Chapter 2-1000 (4) (a); To satisfy the employment and causation requirements, the evidence needs to establish either (1) that the employee had at least one day of verified employment at a DOE facility during a period when beryllium dust particles, or vapor may have been present at the facility; or (2) that the employee was present for at least one day at a DOE facility, or a facility owned and operated by a beryllium vendor.

The presumption under the EEOICPA is if there was verified employment at a DOE facility, there was a possibility of exposure to beryllium. The possibility of beryllium exposure is not in dispute. There has never been a question as to whether Mr. Freeman was exposed to beryllium in the performance of his duties at the Paducah GDP. The evidentiary requirement of the employee having at least one day of verified employment at a DOE facility during a period of potential beryllium exposure has been previously established.

The 5-page copy of a DMC report dated December 17, 2008; and, the two page "Statement of Facts," are not considered new evidence. This information is part of the evidence already on file and has been addressed by the FAB in previous Final Decisions.

With regard to the AR's 7-page letter, the District Office considers:

- The evidentiary requirement of the employee having at least one day of verified employment at a DOE facility during a period of potential beryllium exposure has been established.
- The listed "Pre-1993 CBD criteria," are further defined in the Federal (EEOICPA) Procedure Manual.<sup>1</sup> The medical evidence of file was previously reviewed in accordance with this information.
- The provided sections were for a Final Decision dated May 28, 2004 of a case accepting CBD under Part B of the Act. The facts in the provided sections were different from Ms. Freeman's claim.
- The AR erroneously concludes compliance of Criteria 1 - Characteristic chest radiographic or computed tomography (CT) abnormalities; Criteria 2 - Restrictive or obstructive lung physiology testing or diffusing lung capacity defect; Criteria 3 - Lung

<sup>1</sup> Federal EEOICPA Procedure Manual Chapter 2-1000.6. October 2009


pathology consistent with CBD; and, Criteria 4 – Clinical course consistent with a chronic respiratory disorder. However, there was no new medical evidence submitted. (The totality of the medical evidence of file only supports Criteria 2 and Criteria 4.)<sup>2</sup>

As previously indicated, regulations state that in order to support the request to reopen, a claimant must submit evidence of either covered employment or exposure to a toxic substance, or identify either a change in the probability of causation guidelines, a change in the dose reconstruction methods or an addition of a class of employees to the Special Exposure Cohort (SEC).

In consideration of the current request to reopen, it is determined that Ms. Freeman has not submitted any evidence that is new and/or compelling to the outcome of the claim. Therefore, I find that the request to reopen does not contain the requisite evidence to warrant a reopening of the claim for survivor benefits under Part B of the Act.

### CONCLUSION

Based upon the foregoing discussion, I find there is insufficient basis to warrant a reopening of Ms. Freeman's claim for CBD under Part B of the Act.



JAMES BIBEAULT  
District Director  
Jacksonville, FL  
Division of Energy Employees  
Occupational Illness Compensation

---

<sup>2</sup> FAB Final Decision dated August 10, 2009.

## CERTIFICATE OF SERVICE

I hereby certify that on July 28, 2011, a copy of the DENIAL OF REOPENING REQUEST was sent by regular mail to the following:

Lynda L. Freeman  
3058 Monkey's Eyebrow Road  
LA Center, KY 42056

Gary S. Vander Boegh ✓  
Commonwealth Environmental Services, LLC  
4645 Village Square Drive, ST. F  
Paducah, Kentucky 42001

  
f

JAMES BIBEAULT  
District Director  
Jacksonville, FL  
Division of Energy Employees  
Occupational Illness Compensation

## Employment affidavits received:

- Joe D. Wyatt who reported he was a work associate of the employee at the Paducah GDP, Paducah, KY from 1951 through 1954. Mr. Wyatt stated "I was his labor foreman".
- Fort R. Duley reported he was a work associate of the employee at the Paducah GDP from 1952 through 1953. Mr. Duley stated "I worked there as a guard and he came through my post occasionally".
- Robert C. Turner who reported he was a work associate of the employee at the Paducah GDP from 1951 through 1954. Mr. Turner stated "I worked as a guard and check him in the plant from time to time".

## The medical evidence submitted with the claim includes the following:

- A bronchial washings and bronchial brushings pathology report signed by E. W. Ylitalo, M.D., dated December 23, 1989 gave a diagnosis of poorly differentiated large cell adenocarcinoma of the left upper lobe.
- Discharge summary report signed by W. H. Culbertson, M.D., dated December 26, 1989 and gave a diagnosis of left upper lobe large cell carcinoma.

On May 13, 2003, a copy of the case file, along with a National Institute for Occupational Safety and Health (NIOSH) Referral Summary Document (NRSD) was forwarded to NIOSH for dose reconstruction for the lung cancer.

On September 23, 2005, the district office received the "NIOSH Report of Dose Reconstruction under EEOICPA", which provided the estimate of dose to the lung cancer site. Included with the case record were the dose reconstruction report, in which NIOSH provided a detailed discussion of their findings, and a NIOSH form OCAS-1, signed by the claimant. Based on the dose estimates provided by NIOSH, DOL completed a calculation of probability of causation using NIOSH-IREP, which is an interactive software program. The probability of causation for the lung cancer was determined to be **3.53%**.

A copy of the employee's death certificate documents that the employee was widowed at the time of his death. The claimant presented a birth certificate, documenting the relationship to the employee and a marriage certificate, documenting the claimant's name change. The evidence of record establishes that the claimant was 49 years of age at the time of the covered employee's death.

RECEIVED  
 DIVISION OF WORKERS COMPENSATION  
 14 AUG 31 10:37  
 STATE OF MISSOURI  
 DEPARTMENT OF REVENUE

**Employment History Affidavit for a Claim Under the Energy Employees Occupational Illness Compensation Program Act**

**U.S. Department of Labor**  
 Employment Standards Administration  
 Office of Workers' Compensation Programs



**Note:** This form is used to affirm the employment history for a claim filed under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA). Please do not write in the shaded areas.

OMB No. 1215-0197  
 Exp Date: 08/31/2010

**Employee's Information (Print clearly)**

<b>1. Employee's Name</b> (Last, First, Middle Initial) FREEMAN, EZRA A.	<b>2. Maiden/Former Name</b>	<b>3. Social Security Number</b> (If known) 405-18-4428
---	------------------------------	--

**Your Information (Print clearly)**

<b>4. Your Name</b> (Last, First, Middle Initial) FERREN CLARENCE	<b>5. Your Telephone Number(s)</b> a. Home: (270) 224-2941
<b>6. Your Address</b> (Street, Apt. #, P.O. Box) 284 FERREN LANDING RD ROUTE 3 (City, State, ZIP Code) Kovil, Ky 42053	b. Other: ( ) - c. Other: ( ) -
<b>7. Your Relationship to the Employee</b> (Check all that apply)	
<input checked="" type="checkbox"/> Work Associate <input type="checkbox"/> Spouse <input type="checkbox"/> Son/Daughter <input type="checkbox"/> Step-child <input type="checkbox"/> Parent <input type="checkbox"/> Grandparent <input type="checkbox"/> Friend <input type="checkbox"/> Other: _____	

**Employee's Work History**

In chronological order, *starting with the most recent period of employment*, describe your knowledge of the employee's work history. Provide as much identifying information as possible concerning the name of the employer and location (city & state) where the employee performed the work.

**Employer - 1** (Provide as much information as possible - if necessary attach a separate sheet)

<b>Your knowledge of where the employee worked</b> (spell out names)	Facility Name: <u>UNION CARBIDE</u> City/State: <u>PADUCAH, Ky</u> Building(s): _____ Contractor or sub-contractor name(s): <u>E. H. McGRAW</u>
<b>Dates you know the employee worked at this facility</b>	Start Date: <u>10</u> / <u>10</u> / <u>1953</u> End Date: <u>12</u> / <u>31</u> / <u>1954</u> Month    Day    Year    Month    Day    Year
<b>What type of work did the employee do?</b> (Describe duties in detail)	Occupation: <u>LABOR</u> Title: _____ Duties: _____
<b>Explain how you know the employee's work history</b>	<u>I CLARENCE FERREN WORKED WITH ALTON FREEMAN FOR OVER 3 YEARS. HE HAULED STEEL ALSO WORKED AS A LABOR.</u>
<b>If you worked with the employee during this period, provide the following:</b>	Your position and/or title: _____ Dates you worked with the employee: From: <u>2/1/1957</u> To: <u>4/1954</u>

**Employer-2** (Provide As Much Information As Possible—If Necessary, Attach A Separate Sheet)

<p><b>Your knowledge of where the employee worked</b> (Spell Out Names)</p>	<p>Facility Name: <u>RAYTHEON F-16 CONTRACTORS</u> City/State: <u>LEXINGTON, MA</u>                  Building(s): _____                  Contractor or Sub-Contractor Name(s): <u>RAYTHEON CONTRACTOR</u></p>
<p><b>Dates you know the employee worked at this facility</b></p>	<p>Start Date: <u>1</u> / <u>1</u> / <u>1952</u> End Date: <u>12</u> / <u>1</u> / <u>1954</u>                  Month Day Year Month Day Year</p>
<p><b>What type of work did the employee do?</b> (Describe Duties In Detail)</p>	<p>Occupation: <u>LABOR</u> Title: <u>N/A</u>                  Duties: _____</p>
<p><b>Explain how you know the employee's work history</b></p>	<p><u>I CLARENCE FERRON SAW AND WORKED WITH MR ALTON FREEMAN AS A LABOR ALL OVER THE PLANT SITE.</u></p>
<p><b>If you worked with the employee during this period, provide the following:</b></p>	<p>Your Position and/or Title: <u>LABOR</u>                  Dates You Worked with the Employee: From: <u>1/1952</u> To: <u>12/1954</u></p>

**Employer-3** (Provide As Much Information As Possible—If Necessary, Attach A Separate Sheet)

<p><b>Your knowledge of where the employee worked</b> (Spell Out Names)</p>	<p>Facility Name: <u>UNION CARBID</u> City/State: <u>PADUCAH, KY</u>                  Building(s): _____                  Contractor or Sub-Contractor Name(s): <u>C.P. SCHWARTZ</u></p>
<p><b>Dates you know the employee worked at this facility</b></p>	<p>Start Date: <u>1</u> / <u>1</u> / <u>1952</u> End Date: <u>12</u> / <u>1</u> / <u>1954</u>                  Month Day Year Month Day Year</p>
<p><b>What type of work did the employee do?</b> (Describe Duties In Detail)</p>	<p>Occupation: <u>LABOR / ELECTRICIAN</u> Title: <u>N/A</u>                  Duties: _____</p>
<p><b>Explain how you know the employee's work history</b></p>	<p><u>I CLARENCE FERRON SAW AND WORKED WITH MR ALTON FREEMAN AS A LABOR ALL OVER THE PLANT SITE.</u></p>
<p><b>If you worked with the employee during this period, provide the following:</b></p>	<p>Your Position and/or Title: <u>LABOR</u>                  Dates You Worked with the Employee: From: <u>1/1952</u> To: <u>12/1954</u></p>

**Declaration of the Person Completing This Form**

Any person who knowingly makes any false statement, misrepresentation, concealment of fact or any other act of fraud to obtain compensation as provided under EEOICPA or who knowingly accepts compensation to which that person is not entitled is subject to civil or administrative remedies as well as felony criminal prosecution and may, under appropriate criminal provisions, be punished by a fine or imprisonment or both. I affirm that the information provided on this form is accurate and true.

X. Clarence Ferron (Signature) 11/9/2008 (Date)

RECEIVED  
 Resource Center Date Stamp  
 Paducah Resource Center

FEB 01 2008  
 Transmitted to DOL-DO  
 FEB 07 2008



## NIOSH Dose Reconstruction Project Meeting On Paducah Gaseous Diffusion Plant Site Profile

---

**Meeting Date:**

February 10, 2005

**Meeting with:**

PACE Local 5-550 and SPFPA Local 111

The meeting was arranged with union leadership and highly publicized locally. Of the approximately 200 people in attendance, the following chose to sign-in:

**Attendees:**

Name	Affiliation	Name	Affiliation
Eugene L. Caldwell	Allied Signal	Lloyd Brazell	PACE
Harold Russell	PACE	Cora Harris	PACE
Betty Rushing	PACE	Dennis Tyner	PACE
Debbie Paulson	PACE	Jesse Tyner	
Harold Robey		Mary J. Warren	
J.D. Armstrong		Jeanne Bone	
Avanell Hornsby		Rodney C. Smith	
Homer G. Bullard		Jay Stoll	SPFPA Local 111
Mike Kaufman	SPFPA Local 111	Fred Carter	
Ron Fowler		Joe Walker	Paducah Sun
Robert Pierce		Glenn Young	
Bernard Janselm		C. Woodford	
Barry Anderson		Chris Naas	
Frances Crawford		Sue West	
Ralph West		Cephus Robertson	
Billie Ellis		Cathy Pigg	
Cherry Lee		Don Valentine	
James E. Smith		Ira Myers	
Doris Myers		Fred Golightly	
Kenneth Collier		John C. Locke	
Steve Lewis		J.B. McGinnis	
Billy Feezer	Union Carbide	James M. Crews	IW Local 782
Trent Griffin	USEC	Charles & Dora Humphrey	Union Carbide
Herman & Mildred Englert	PGD Plant	Tom Emerson	PGD Plant
Charlie Baker	PGD Plant		

**NIOSH and ORAU Team Representatives:**

Peter A. Darnell – National Institute for Occupational Safety and Health (NIOSH), Office of Compensation Analysis and Support (OCAS)

Jay Maisler – Integrated Environmental Management, Inc.

William “Bill” Murray – Oak Ridge Associated Universities (ORAU)

Mark Lewis – Advanced Technologies and Laboratories International Inc. (ATL)

Dawn Catalano – ATL



## NIOSH Dose Reconstruction Project Meeting On Paducah Gaseous Diffusion Plant Site Profile

---

**Jay Maisler:**

To clarify this issue, the person in question does not work on dose reconstructions.

**Question:**

The PACE/University of Utah report should be used but is not included in reference to levels of exposure. The report ranks potential exposures, but notes that this information should not be used for individual needs, such as dose reconstruction. With that in mind, should summary data be appropriate for dose reconstruction?

**Peter Darnell:**

The section with that reference is only giving an overview, but Section 6 gives more specific and detailed information. Individual dose reconstructions are calculated based on specific information from the site.

**Question:**

Can information be used in the Site Profile without validation?

**Peter Darnell:**

The Site Profile was only recently published, and the information is still subject to revision if an error is found. Comments need to be submitted in writing to NIOSH to point out any potential inaccuracies or additional information that would add validity to the document. Alternate methods of dose reconstructions, such as the use of nuclide concentration, can be used to develop upper bounds. If a claim is given a high dose based on the type of site, a dose reconstruction could be accurately completed.

**Question:**

The presentation Mr. Murray gave indicated that occupational environmental dose is given for unbadged workers. However, the Site Profile does not address the issue of hot equipment coming in from other sites like Oak Ridge. Anything that is mentioned only goes back to 1952; materials were brought in earlier – at least 1951, but there's no way to even speculate on it without it being brought up in the Site Profile.

**Jay Maisler:**

These concerns have recently been brought up to the Site Profile Team, who are now gathering information to update the Site Profile.

**Question:**

Will you confirm or deny the allegation that contaminated equipment was brought to the site?

**Peter Darnell:**

That is something NIOSH does not know about, so any comment would be ill-advised.

**Comment:**

Why did NIOSH wait so long to make an attempt to get worker input? If it had been done earlier, there is a good possibility that more people would have received compensation before they died. I personally did not know about my exposure history when I was diagnosed with cancer in 1998. The DOE document is misleading, especially in regard to the urinalysis program. The samples were usually taken after long weekends in the 1970s, so they would be less indicative of the true dose received. Likewise, Chemical Operations scrubbed the

Date: July 10, 2009

U. S. Department of Labor  
DEEOIC, FAB  
P.O. Box 77918  
Washington, DC 20013-7918.

**Attention: Reconsideration Request for Part B Claim for Compensation**

Employee: Ezra A. Freeman  
File Number: 405184428  
Claimant: Lynda Lou Freeman

**RE: REQUEST FOR RECONSIDERATION OF PART B FINAL DECISION  
DENIAL FOR CHRONIC BERYLIUM DISEASE AND REOPENING OF PART  
B CLAIM FOR LUNG CANCER AND EMPHYSEMA BASED ON THE  
“UNDISPUTED” EVIDENCE AND TESTIMONIES OF CO-WORKERS**

Dear Mr. Curtis Johnson FAB Representative, Ms. Rachel Leiton Director,  
Christy Long, **Deputy Director**, Michael A. Chance, **Chief, Policy Branch**  
LuAnn Kressley, **Chief, Final Adjudication Branch**, Eugene Schwartz, **M.D., Medical  
Director**

I hereby request a **“Reconsideration”** of the Department of Labor’s (DOL) “Final Decisions” issued by the Department of Labor (DOL) Final Adjudication Branch (FAB) on August 10, 2009. On September 8, 2009, Commonwealth Environmental Services (CES) requested, on behalf of the claimant Lynda Lou Freeman, a copy of Mr. Freeman’s DOL record file. In addition to the lack of the official record file, hearing representative Curtis Johnson clearly failed to consider Mr. Freeman’s employment as an electrician after the dates of employment indicated in the Final Decision.

Per Mrs. Freeman’s request, CES respectfully requests that Mrs. Freeman be allowed to thoroughly review her father’s DOL record files prior to Mr. Johnson (or any other DOL official) issuing a denial of her reconsideration request. Upon receipt, CES will provide additional evidence of Mr. Freeman’s detailed earnings during his employment beyond the days allegedly represented his employment duration at the Paducah Gaseous Diffusion Plant. Mrs. Freeman also reserves the right to supplement this response with additional evidence and “disclosure statements” that support her claims for Part B compensation.

Please contact me at (270) 450-0850, if you have any further questions regarding Mrs. Freeman’s request for reconsideration and reopening of her Part B claim for compensation.

Sincerely,

Gary S. Vander Boegh  
“Authorized Representative”

Vice President- Commonwealth Environmental Services, LLC.

**VIA FACSIMILE 202-693-6111 and email**

**The Honorable Hilda Solis**

Secretary of Labor

U.S. Department of Labor

200 Constitution Avenue, NW

Room S-2018

Washington, DC 20210

**Rachel Leiton, Director DEEOIC by email**

**Senator Richard Durbin via facsimile (202) 228-0400**

**Senator Mitch McConnell via facsimile and email (202) 224-2499**

**Senator Jim Bunning via facsimile (202) 228-1373**

Senator Harry Reid via facsimile (202) 224-7327

Congressman Ed Whitfield via facsimile (202) 225-3547

Congressman Bart Stupak via facsimile (202) 225-4744

1 need some sort of evidence to support why you are  
2 requesting that the claim be reopened.

3           Since a Final Decision has already been  
4 issued for the lung cancer, I would not be able to  
5 discuss what happened with the lung cancer claim only  
6 because that decision has already been made final.

7           MS. LYNDA L. FREEMAN: Sir, I have tried to  
8 get the evidence from his lung cancer. He said that  
9 his papers have been destroyed. I cannot go and get  
10 nothing from him.

11           The hospital gave me everything. I know  
12 you have it all, because I sent every paper that I  
13 could get hold of. I don't know no other way to tell  
14 you. I just can't get nothing else.

15           HEARING REPRESENTATIVE JOHNSON: We  
16 understand based on how long the individual may have  
17 been diagnosed with the condition that medical  
18 records are only kept by facilities within a certain  
19 period of time.

20           Just to give you a little bit of background  
21 for Chronic Beryllium Disease, if we feel that an  
22 individual had some sort of lung condition prior to  
23 1993, there are certain criteria that we are looking  
24 for in the way of the pulmonary test and the  
25 information that you would send.

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1           This is really more of a medical issue that  
2 we normally would have to have a physician make a  
3 comment on whether we feel that the individual has  
4 what is known as Chronic Beryllium Disease.

5           Before 1993, there was one specific test  
6 that you could do to know if a person had a  
7 sensitivity to beryllium. Since your father was  
8 diagnosed with this lung condition, or had a lung  
9 condition I should say, prior to 1993, it's not as  
10 simple as being able to look at a blood test or one  
11 particular piece of evidence and say we know this  
12 individual had some type of beryllium disease.

13           We have to look at the whatever medical  
14 evidence we have, the entire medical record that we  
15 have. It's really more of a judgment call as to  
16 whether or not the person has the disease based on  
17 our regulations for our program.

18           So what I can do, as I mentioned in my  
19 opening statement, that the decision to deny your  
20 claim was basically on the opinion of our physician.

21           What I can do is just make sure that the  
22 physician report did address all the medical evidence  
23 in the file. If for some reason if I feel that there  
24 was additional evidence that may be warranted, even  
25 though you are telling me that you don't have

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1 anything additional. I understand that.

2 What I want to do is make sure that before  
3 I issue my Final Decision, I want to make sure that  
4 the physician's report addressed all the evidence  
5 that we have in the file.

6 Just to confirm, you are indicating that  
7 there is no other medical evidence regarding the lung  
8 condition, I should say. There is no medical  
9 evidence out there regarding the lung that you can  
10 get?

11 MS. LYNDA L. FREEMAN: No, sir.

12 HEARING REPRESENTATIVE JOHNSON: Thank you.

13 Ms. Viniard, is there something you wanted  
14 to add?

15 MS. VICKIE VINIARD: As I was looking  
16 through some of the medical records, and I know you  
17 have those too, I can't see where they were testing  
18 for the beryllium.

19 I know back then, the kind of testing was  
20 not really -- they didn't really know how to test for  
21 the beryllium at the time. And so I cannot see on  
22 any of his papers where he was tested for that.

23 I do have something I wanted you to look at  
24 too, that I saw in one of these testings. It was  
25 called, it was from one of the pathology reports. I

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MATERIALS AND BUILDINGSMetals

- Beryllium C-710, C-720, C-746 (Smelter) \*these are the known locations
- Cadmium C-400
- Chromium C-710, C-400, RCW Cooling Towers
- Lead C-746 (Smelter), Switchyards
- Mercury C-400, C-720
- Nickel Machine Shop, Cutting/Welding
- Nickel Carbonyl C-710, Machine Shop, Cutting/Welding

Solvents

- Acetone C-710, C-400
- Acetonitrile
- Acrylonitrile C-400
- Benzene C-710
- Chlorinated Solvents C-400, C-710, C-720, Process Buildings (TCE, TCA, Carbon Tetrachloride)
- Cutting Oils C-720
- Freon Process Buildings, C-420, C-410
- Methyl Ethyl Ketone C-400, C-710
- Paint/Paint Thinners C-720/Paint Shop
- Stoddard Solvent

Radioactive Materials

- Plutonium C-400, C-710, C-310
- Uranium C-310, C-335, C-340
- Technetium C-400, C-310, C-710, C-335, C-331 U/1
- Radiation C-410, C-420, C-340

Acids/Caustics

- Ammonia C-410, C-342
- Chlorine RCW Pumphouses, C-710
- Chromic Acid C-400, C-337, RCW Cooling Towers

Fluorine

- Hydrochloric Acid C-400, C-410, C-420, UF6 releases
- Hydrofluoric Acid C-400, C-410, C-420, UF6 releases
- Nitric Acid C-400
- Sodium Hydroxide C-342
- Sulfuric Acid C-710, Battery Rooms
- Fluorine Process Buildings, C-410, Process piping, Process seals

Process Chemicals

- Chlorine Trifluoride Process Buildings, C-350, C-710
- Uranium Hexafluoride Process
- Uranium Tetrafluoride C-400, C-420, C-340
- Uranium Oxide C-400, C-420
- UO2F2 Process

Other Materials

- Arsenic C-310, RCW Cooling Towers, C-710 heels, C-360
- Asbestos Plant wide
- Bromine Trifluoride C-710
- Cyanides C-400
- Dust/Wood/Coal Fibers C-400, C-420, C-340
- Fiberglass C-400, C-410, C-600, Switchyards, Process Cell Panels
- Epoxy resins C-720
- Hardeners Switchyards
- Heat Process Buildings
- Noise Process Buildings
- PCB's Process Buildings, Switchyards
- Phosgene
- Silica C-410, C-420
- Welding Fumes C-410, C-420, C-400, C-720, C-340, Process Buildings
- Landfill accepted all materials



Callback/Addendum Notes

Date: 04/13/2009 2:58:52 PM

By User: jhalley

Notes: Reference note on 4/13/09: Telephoned Hearing Representative, Curtis Johnson, and left a message on his voice mail that Lynda Freeman had contacted the resource center to advise that she would be bringing a representative (Vickie Vinyard) with her to her hearing.

orig\_user\_nm

orig\_dt

updt\_user\_nm

updt\_dt

FAB ✓

**U.S. DEPARTMENT OF LABOR** Employment Standards Administration  
 Office of Workers' Compensation Programs  
 Division of Energy Employees' Compensation  
 400 West Bay Street, Suite 722  
 Jacksonville FL 32202  
 Phone: (877) 336-4272 or (904) 357-4705  
 Fax: (904) 357-4704



**COVERED EMPLOYEE:** Ezra A. Freeman (dec)  
**CLAIMANT:** Lynda L. Freeman  
**FILE NUMBER:** 405184428

### **NOTICE OF RECOMMENDED DECISION**

This is a Recommended Decision of the District Office concerning a claim for compensation under Part B of the Energy Employees' Occupational Illness Compensation Program Act (EEOICPA or the Act). The District Office recommends denial of the claim.

### **STATEMENT OF THE CASE**

Lynda L. Freeman, hereinafter referred to as the claimant, filed a claim under Part B and Part D (now known as Part E) on January 3, 2003, as the surviving child of Ezra A. Freeman, hereinafter referred to as the employee. The filing date was determined by the date the claims were received in the Paducah Resource Center. The claimant claimed that the employee developed lung cancer and emphysema as a result of his employment at the Paducah Gaseous Diffusion Plant (PGDP) in Paducah, KY from sometime in 1952 to sometime in 1955 or 1956.

A Notice of Final Decision and Review of the Written Record issued on May 1, 2006 [Docket Number 40269-2006] under Part B and Part E of the Act, confirmed that the claimant was the only eligible survivor and that the employee's employment dates at the Paducah Gaseous Diffusion Plant in Paducah, KY were from October 1, 1953 to December 31, 1953. The decision denied the claim under Part B for lung cancer, due to the probability of causation (PoC) resulting in 3.53% and denied emphysema due to a non-covered occupational illness. The claimant's Part E claim was also denied, finding that she did not qualify as a covered child.

On October 30, 2006, the claimant filed a new claim, claiming the employee developed chronic beryllium disease (CBD) as a result of his Department of Energy (DOE) employment.

On October 29, 2007, a Final Decision was issued under Parts B to deny the claim for CBD finding that the medical evidence did not support pre-1993 CBD.

Following the issuance of the Final Decision, on February 8, 2008, the claimant submitted additional medical evidence not previously reviewed. The claimant also submitted new employment affidavits, indicating the employee worked prior to the confirmed employment dates of October 1, 1953 to December 31, 1953.

After review of the newly submitted employment and medical evidence, a Director Order was issued on June 30, 2008, vacating the Final Decision under Part B.

Evidence found in the employee's Social Security earning records and the submitted affidavits confirmed additional employment at the PGDP during the periods of July 1, 1951 through December 31, 1951 and from July 1, 1953 until October 31, 1953.

On September 4, 2008, a rework request was submitted to the National Institute for Occupational Safety and Health (NIOSH) to inquire as to whether the additional employment would change the outcome of the dose reconstruction for the employee's lung cancer. NIOSH reported that the likely increase to the overall dose would not be very significant and the additional employment would not likely add much to the dose. Considering all the evidence, a rework for the lung cancer would not be required.

The employee's death certificate confirms he passed away on August 5, 1991. A letter was sent to the claimant on November 07, 2008, providing the following requirements for Pre-1993 CBD:

To accept a claim for pre-January 01, 1993 chronic beryllium disease, the medical records must demonstrate treatment and/or diagnosis of a chronic respiratory condition prior to January 01, 1993 and provide three of the following items:

- Characteristic chest radiograph (X-ray) or computerized tomography (CT) scan denoting abnormalities
- Restrictive or obstructive lung physiology testing (PFT) or diffusing lung capacity defect
- Lung pathology report consistent with chronic beryllium disease
- A clinical course consistent with a chronic respiratory disorder
- Immunologic tests showing beryllium sensitivity (skin patch test or beryllium blood test)

The claimant submitted the following medical evidence in support of her CBD claim:

- Approximately 12 chest x-rays performed between February 6, 1979 through April 17, 1991
- Bronchial biopsies performed on December 23, 1989
- Lung pathology reports dated December 26, 1989 and January 4, 1991
- ABG test dated January 23, 1977 and April 19, 1991
- CT scan of the chest performed on January 2, 1991
- Pulmonary Function Test (PFT) performed on May 3, 1988

To ensure that all medical evidence had been submitted for the CBD, a telephone call was made to the claimant on October 31, 2008. The claimant stated that she had no additional medical documentation to submit in support of her claim. Pursuant to this phone call, the case was sent to the District Medical Consultant (DMC) to determination if the employee had developed pre-1993 CBD.

On November 20, 2008, the medical records in the file were sent to a DMC to determine if the medical records in the file meet the above criteria for pre-1993 CBD.

In his response, the DMC opined that the employee's medical evidence did not support a diagnosis of pre-1993 CBD. The DMC made the following medical opinion:

- o The chest x-rays did not show characteristic abnormalities of CBD, even on an at least as likely as not basis
- o The ABG tests results were too non-specific to support presence of restrictive or obstructive lung physiology, even on an at least as likely as not basis
- o The medical records did support a clinical course consistent with a chronic respiratory disorder
- o The PFTs did show a restrictive or obstructive lung physiology or diffusion lung capacity defect that is consistent with CBD
- o The lung pathology reports do not show any diffuse interstitial fibrosis, lymphocytosis, or non-caseating granulomas. The pathology reports, even on an at least as likely as not basis, did not show findings consistent with CBD.

Based on the medical opinion of the DMC, it is determined that the employee only meets two of the necessary three criteria needed for a pre-1993 diagnosis of chronic beryllium disease.

Considering all of the medical evidence on file, the district office recommends denial of the claim for CBD under Part B.

### **FINDINGS OF FACT**

1. The claimant's application for survivor benefits under the EEOICPA was filed on January 8, 2003 and October 30, 2006.
2. The employee was a DOE employee at the Paducah Gaseous Diffusion Plant in Paducah, KY.
3. Throughout the course of its operations, the potential for beryllium exposure existed at the Paducah Gaseous diffusion Plant, due to beryllium use, residual contamination, and decontamination activities.
4. The death certificate indicates that the employee died on August 5, 1991 with the cause of death listed as cardiac arrest and lung cancer.
5. Based on the medical opinion of the District Medical Consultant, it was determined that the employee did not meet the criteria required under the Act for a pre-1993 diagnosis of chronic beryllium disease.

### **CONCLUSIONS OF LAW**

The employee is a DOE contractor employee, in accordance with 42 USC § 7384l(11)(B)(ii), employed at a DOE facility, as defined in 42 USC § 7384l(12).

The employee does not meet the criteria of having "established chronic beryllium disease" as that term is defined under 42 USC §7384l (13) (B) and 20 CFR § 30.207 (c) (2).

The claimant is not entitled to compensation, lump sum payment of \$150,000, as there is insufficient evidence to establish that the employee suffered from CBD, an "occupational illness" in accordance with 42 U.S.C. § 7384l(15).

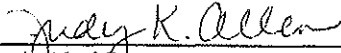
Based on the above findings, the District Office recommends a denial of the claimant's claim for survivor benefits under Part B of the Act for CBD.



William B. Hicks  
Claims Examiner

JAN 29 2009

Date



Judy K. Allen  
Senior Claims Examiner

JAN 29 2009

Date

**WorkWright, Inc.**  
*for occupational health services*

P.O. Box 1142  
McLean, Virginia 22101-1142  
Phone: 703-556-0092

Date: December 17, 2008

To: Judy K. Allen  
Claims Examiner

From: William E. Wright, MD, MSPH  
President, WorkWright, Inc. *WE Wright*  
VA#0101038882  
District Medical Consultant  
Jacksonville District Office

Re: Mr. Ezra A. Freeman  
File #: 405-18-4428

---

Thank you for your inquiry. I reviewed the Statement of Accepted Facts (SOAF), the entire case file, and your questions.

QUESTION#1: Do the chest x-rays/CT scans show characteristic abnormalities of CBD?

ANSWER#1: No. Please see discussion for details.

QUESTION#2: Are the arterial blood gas tests indicative of restrictive or obstructive lung physiology?

ANSWER#2: No. Please see discussion for details.

QUESTION#3: Do the records reflect a clinical course consistent with a chronic respiratory disorder?

ANSWER#3: Yes. Please see discussion for details.

QUESTION#4: Do the pulmonary function tests (PFTs) show a restrictive or obstructive lung physiology or diffusion lung capacity defect that is consistent with CBD?

ANSWER#4: Yes. Please see discussion for details.

QUESTION#5: Do the pathology reports show findings consistent with CBD?

ANSWER#5: No. Please see discussion for details.

DISCUSSION: #1, Chest radiograph and CT scan reports: The reports in the file are cited chronologically. Listings are for conventional chest radiographs (non-CT) unless stated otherwise:

01/20/70: normal

01/18/77: normal except for increased density near the junction of the heart and diaphragm on the right thought to be either "chronic change" or subsegmental pneumonia.

02/06/79: early hyper-expansion consistent with emphysema, mild fibrosis right middle lobe (Dr. Boom) – (NOTE: admission film after a chlorine inhalation injury. Dr. Shields referred to this chest radiograph as normal – see notes in clinical course, below).

02/07/79: normally expanded and aerated lungs with no sign of active parenchymal disease, no detectable change from yesterday's film (Dr. Chumley).

12/17/79: both lungs show some linear fibrosis and no definite acute parenchymal disease.

03/15/86: very hyperinflated lungs indicating advanced emphysema, small calcified granuloma in right lower lobe.

03/09/88: hyperaerated lung fields consistent with obstruction, no acute infiltration.

05/01/88: hyperinflated lungs consistent with obstructive lung disease; left and right lungs clear except for some very minimal interstitial infiltration in the medial aspect of the right lung base – probably mild interstitial pneumonitis, right medial base. (NOTE: portable film technique – treated for COPD with infection, see clinical course notes)

05/04/88: hyperexpansion consistent with COPD, no active infiltrate, density right base is less prominent – appears to be pulmonary blood vessels.

07/02/88: interstitial lung disease is present with what appears to be some basilar fibrosis, no definite pneumonia; chronic lung disease with basilar fibrosis. (NOTE: was treated with antibiotics for possible pneumonia – see notes in clinical course section; also – this film was done with a portable chest radiograph machine – can be suboptimal technically).

07/18/88: advanced COPD with markedly hyperinflated lungs, no acute pulmonary infiltrate.

12/21/89: hyper-expanded lungs, left perihilar mass, no other lesions of the lung fields.

Chest CT 12/22/89: left upper lobe mass, no other lung nodules, slight soft tissue prominence in the left hilum, no other abnormalities noted.

01/26/90: left perihilar mass, hyper-expansion of lungs indicating COPD.

05/17/90: left perihilar mass, hyperaerated lung fields.

08/02/90: no sign of recurrent tumor in left anterior upper hilum, scarring seen (prior radiation therapy), diffuse signs of chronic lung disease present (pulmonary emphysema).

11/01/90: over-expanded lungs, left hilar fullness and probable fibrosis in that area.

01/01/91: hyper expanded indicating COPD, left hilar mass, enlarging.

Chest CT 01/02/91: left perihilar mass smaller; tiny stellate parenchymal scar right upper lobe, focal area of scar at left heart border.

03/07/91: COPD, left hilar mass, lingular pneumonia.

Chest CT 03/19/91: enlarging lingular mass with signs of obstructive pneumonitis; remainder of lungs well inflated with no other abnormalities noted, "No other significant pathologic process" (Dr. Riggs).

04/17/91: markedly hyperaerated lungs, large left suprahilar mass, left lower lung field pneumonia (acute infiltrate) with a small pleural effusion.

In summary, the chest radiograph reports evolve from normal to showing hyper-expansion/hyperinflation of COPD/emphysema. A few readings of conventional chest radiographs refer to signs of fibrosis in several areas of lung – these findings are not consistently present and correlate with occurrence of a chlorine inhalation injury, complication of COPD with infection and/or pneumonia, and post-radiation treatments for lung cancer. The reports of the chest CT scans, which are more sensitive to the presence of fibrosis, have reports that do not mention focal scars likely related to healed infection, but no interstitial fibrosis, diffuse interstitial fibrosis, scattered round opacities or nodular densities, ground glass opacities, scattered reticular-nodular densities, or septal lines, consistent with or characteristic of CBD<sup>1</sup>. In my opinion with a reasonable medical certainty, the available chest radiography does not show characteristic abnormalities of CBD, even on an at least as likely as not basis.

**#2, Arterial blood gas (ABG) tests:** The following test reports were found in the file:

01/23/77 ABG normal;

05/03/88: ABG with 93% saturation while breathing 2L/min supplemental oxygen.

07/02 and 7/06/88: ABGs with 90-91% on room air.

12/89: three serial ABGs with pO<sub>2</sub>s 50-59mmHg, oxygen saturations 82-85% on room air.

04/17/91: ABG normal on 2L/min supplemental oxygen.

10/01/91: two ABGs; pO<sub>2</sub> 55, saturation 82% on room air – corrects to 93 and 95 respectively with 2L/min supplemental oxygen.

In summary, the reports range from normal to showing arterial oxygen desaturation, corrected well with supplemental oxygen treatment, and correlate well with Mr. Freeman's infectious exacerbations of his COPD. In my opinion with a reasonable medical certainty the ABG results are too non-specific to support presence of restrictive or obstructive lung physiology, even on an at least as likely as not basis.

**#3, Clinical course consistent with a chronic respiratory disorder:** The records show the following, which in my opinion with a reasonable medical certainty reflect presence of chronic respiratory disorder of COPD/emphysema from 1977 until his death, and of lung cancer from 1989 until his death:

Dr. Coyer's 01/17/77 hospital admission note refers to a history of cigarette smoking and having been told he has early emphysema; no cough, phlegm, wheezing; lung exam hyperresonant with reduced breath sounds at the bases – diagnosis of COPD listed. A 03/100/77 note from Dr. Coyer states his pulmonary function test showed mild small

airways obstruction and he was felt to have severe emphysema with pulmonary artery hypertension; discharge diagnoses included COPD/emphysema.  
hypertension; discharge diagnoses included COPD/emphysema.

02/06/79: admitted to the hospital with a chlorine gas inhalation injury – had shortness of breath, tightness in chest, difficulty breathing, and wheezing; admission chest radiograph normal, had bilateral wheezing on exam; symptoms and physical exam of the lung improved and he was discharged the next day (Dr. Shields).

On 12/17/79 Dr. Brigance noted smoking three quarters packs of cigarettes daily, has chronic lung disease with mild emphysema and shortness of breath on exertion; lung exam with increased chest diameter and rhonchi.

On 03/18/86 Dr. Shields noted emphysema.

On 05/01/88 he was hospitalized for treatment of COPD with infection. On admission, Dr. Culbertson noted past history of smoking, current respiratory failure, severe COPD; pO2 was 47; he received multiple treatments including bronchodilators, corticosteroids, antibiotics, and supplemental oxygen.

Dr. Jaafar interpreted the 05/03/88 PFTs as showing moderate to severe obstructive lung disease with severe hyperinflation air trapping, severe impairment in diffusion, adequate oxygen tension on supplemental oxygen without any significant desaturation; results compatible with emphysema.

Dr. Clarke admitted Mr. Freeman to a hospital 07/02/88 for shortness of breath and chest congestion, an exacerbation of COPD and possible pneumonia; treated with modalities as in May. He was discharged 07/07/88 by Dr. Culbertson for respiratory failure, COPD with infection, and cor pulmonale.

Admitted to the hospital 12/21/89 for exacerbation of COPD with cough, phlegm, and trouble breathing; found to have a left lung mass. Treated for COPD with infection (*Hemophilus*), respiratory failure, and cor pulmonale, and had bronchial washings and lung biopsy (anterior segment left upper lobe) showing poorly differentiated large cell adenocarcinoma of the lung; signs of acute and chronic bronchitis were found on bronchoscopy, but no bronchiectasis.

Hospitalized for exacerbation of COPD 01/01/91; found to have pneumonia, received treatments including antibiotics, corticosteroids, and bronchodilators.

Dr. Locken on 06/13/91 reported that radiation treatments of the lung cancer (6000R) were completed 02/15/90; records show that the lung mass decreased in size but Dr. Locken reported that on a 03/19/91 CT the lung mass was felt to have increased in size.

Death certificate 08/05/91: immediate cause of death listed as cardiac arrest, as a consequence of cancer of lung. No other consequential or other significant conditions listed.

**#4, Pulmonary function tests (PFTs):** The file contains the following PFT:

PFT 05/03/88 shows FEV<sub>1</sub> 1.26L (43%) with FEV<sub>1</sub> /FVC 55% and no improvement after bronchodilator treatment. Total lung capacity was 105%, residual volume 217%; diffusion capacity 17%.

The test report confirms obstructive physiology and excludes the presence of restrictive physiology. CBD can occur with either normal, obstructive, restrictive, or mixed obstructive/restrictive physiology; diffusion capacity can be normal or reduced. In my opinion with a reasonable medical certainty the PFT report shows obstructive physiology and a diffusion capacity defect that are consistent with CBD.

**#5, Lung pathology:** The file contains the following lung pathology reports:

12/23/89: bronchial washings: mixed epithelial cells with macrophages and neutrophils, many malignant cells.

12/23/89: bronchial biopsies: some normal epithelium and some fragments with extensive invasion by poorly differentiated adenocarcinoma; no fungi on special stains.

12/26/89: 24 hour sputum collection: smears and cell blocks showed acute inflammation with polymorphonuclear cells, superficial squamous cells, and histiocytes; no malignancy identified.

In summary, the reports do not show any diffuse interstitial fibrosis, lymphocytosis, or non-caseating granulomas<sup>2</sup>. In my opinion with a reasonable medical certainty, the available lung pathology reports do not show findings consistent with CBD, even on an at least as likely as not basis.

References:

1. Copley S, Hansell DM, Imaging, chapter 31 in: Hendrick DJ, Burge PS, Beckett WS, et. al. (eds). Occupational Disorders of the Lung. WB Saunders, London, 2002:498.
2. *Ibid.*, 168.

As required by the U.S. Department of Labor EEOICP Guidance for District Medical Consultants (DMC Handbook) issued 08/28/08, the following statement is made: "I certify that I am an expert in the required areas of medical expertise for the issues raised in this case and this is my objective medical opinion provided in accordance with the DEEOIC program procedures and guidelines. I also certify that I neither have now, nor have had in the past, any relationship with the claimant, his/her physicians, their attorneys, representatives or any employee, employer, manufacturer or entity that may be connected with this case that would influence my opinion in any way. I also certify that my opinion was not influence by any financial consideration that may benefit me, my family or my heirs".

District Medical Consultant Referral Form

Employee's Name	Case No. <span style="float: right;">G</span>
<b>Ezra A. Freeman</b>	<b>405184428</b>

Two (2) copies of a STATEMENT OF ACCEPTED FACTS and QUESTIONS TO THE DMC are attached. One copy of each should be mailed to the second opinion physician and one copy retained in the claimant's file.

The following physicians have been involved with this case.

1. Robert E. Sandblom M.D.	6.
2.	7.
3.	8.
4.	9.
5.	10.

Medical Condition(s) Claimed:

**Chronic beryllium disease**

Name and address of DMC:

X-rays attached?

Yes       No

Comments:

Provide specialist with:

Copies of medical reports       Other (Specify) \_\_\_\_\_

Signature <i>Judy K. Allen</i> Judy K. Allen	District Office Jacksonville, FL	Date: 11/20/08
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**STATEMENT OF ACCEPTED FACTS**

Ezra A. Freeman  
File Number: 405184428

Mr. Ezra A. Freeman was born on July 14, 1917. He died on August 5, 1991. Cause of death is listed as cardiac arrest and cancer of the lung (diagnosed 1.5 years prior to death)

Mr. Freeman worked at the Paducah Gaseous Diffusion Plant (GDP) as a laborer and electrician for various subcontractors during the following employment periods:

07/01/1951 to 12/31/1951  
07/01/1953 to 10/31/1953  
10/01/1953 to 12/01/1953

Employment dates were verified using Social Security earning records and affidavits. There are no Department of Energy (DOE) records.

The condition being claimed is pre 1993 chronic beryllium disease.

As a laborer and electrician, the employee was exposed to radiation, beryllium, asbestos and other toxic chemicals.

Medical evidence included the following:

- History of COPD and emphysema
- ABG dated 01/23/1977 and 04/19/1991
- Chest x-ray dated 02/06/1979 – indicating mild fibrosis
- Chest x-ray dated 12/17/1979 – indicating linear fibrosis
- Chest x-ray dated 03/15/1986 – indicating advanced emphysema, small calcified granuloma in right lower lobe
- PFT performed on 05/3/1988
- Chest x-ray dated 05/01/1988 and 05/04/1988
- Chest x-ray dated 07/02/1988 – indicating chronic lung disease with basilar fibrosis
- Discharge Summary dated 07/07/1988 indicates the employee was diagnosed with respiratory failure, COPD with infection, cor pulmonale and hypercholesterolemia.
- Chest x-ray dated 12/21/1989 and 12/22/1989
- Bronchoscopy on 12/23/1989
- Pathology Report dated 12/23/1989 – diagnosed lung cancer
- Discharge Summary dated 12/26/1989 indicates left upper lobe large cell carcinoma and severe COPD
- Pathology Report dated 12/26/1989

- Chest x-rays performed on 01/26/1990, 05/17/1990, 08/02/1990, 11/01/1990 (probably fibrosis), 03/07/1991, 03/22/1991, 04/17/1991
- Pathology report dated 01/03/1991 – fiberoptic bronchoscopy with biopsy
- CT Scan of the chest dated 03/19/1991

Medications:

- Sinemet, Procardia, Trental, Ceclor, Persantine, Theo-Dur, Atrovent inhaler, and other drugs

Judy K. Allen  
Judy K. Allen  
Senior Claims Examiner

11-20-2008  
Date

## QUESTIONS FOR DISTRICT MEDICAL CONSULTANTS

**Memo to:** District Medical Consultant

**Re:** Ezra A. Freeman

**File Number:** 405184428

Thank you for taking the time to review the medical records for this employee. The purpose of your review is to assess the medical records with the respect to the stated condition, pre 1993 chronic beryllium disease (CBD), in the claim.

Once you have reviewed the enclosures, please answer the questions below.

- 1.) Do the attached chest x-rays/CT scans show characteristic abnormalities of chronic beryllium disease?
- 2.) Are the attached arterial blood gas (ABG) tests indicative of restrictive or obstructive lung physiology?
- 3.) Do the medical records reflect a clinical course consistent with a chronic respiratory disease disorder?
- 4.) Do the attached pulmonary function tests (PFTs) show a restrictive or obstructive lung physiology test or diffusion lung capacity defect that is consistent with CBD?
- 5.) Do the attached pathology reports show findings consistent with CBD?