

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



March 11, 2009

File Number: [REDACTED] 5108
Employee: Melvin L. Spraggs

Gary S. Vander Boegh
Commonwealth Environmental Services, LLC
7660 Old Hinkleville Road
W. Paducah, KY 42086

Dear Mr. Vander Boegh:

This letter is in reference to our telephone conversation of February 27, 2009, and your subsequent reply (received via fax on March 1, 2009 and via mail on March 5, 2009) regarding your clients' claim for benefits under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA).

As I stated in our telephone conversation, if your clients' wish to file a claim for bladder cancer, please have them complete Claim for Survivor Benefits Forms (EE-2s) to that effect, and submit them, along with medical evidence for bladder cancer, to the Department of Labor (DOL).

We are in receipt of a single EE-2 form, claiming bladder cancer, on behalf of three claimants, which you signed on February 27, 2009. On March 3, 2009, I called your office and left a message stating that for a claim to be initiated, we need a separate EE-2 form for each claimant.

As I have not received three EE-2 forms, the claim of bladder cancer, on behalf of your clients, (Jerry Spraggs, Mary Davis, and Sharon Holt) has not been initiated. For your convenience, I am enclosing three EE-2 forms. Please have your clients complete an individual EE-2 form, for the claim of bladder cancer, and submit all three forms. (Please note, as their authorized representative, you can complete and sign their claim forms, but we will need a separate form for each claimant.)

If you have any questions or concerns, please contact our office at (877) 336-4272. Thank you for your cooperation in helping me to establish your clients' claims.

Sincerely,

Evey Christian
Claims Examiner



March 16, 2009

U. S. Department of Labor, DEEOIC
Final Adjudication Branch
Charles E. Bennett Federal Building
400 West Bay Street, Suite 722
Jacksonville, Fl. 32202

Attention: Evey Christian & Jim Bibeault

File Number: [REDACTED] 5108
Employee: Melvin L. Spraggs

Dear Ms. Christian & Mr. Bibeault,

Enclosed please find the three attached EE-2 forms signed by Mr. Spraggs survivors' Jerry L. Spraggs, Sharon R. Holt, and Mary Davis prepared by Commonwealth Environmental Services (CES). It should also be noted that no evidence has been provided by the Department of Energy (DOE) that indicates that Mr. Spraggs **WAS NOT** monitored while working at the Paducah Gaseous Diffusion Plant (PGDP). In fact, more than enough evidence has been provided to the Department of Labor (DOL) that indicates that DOE officials have continued to withhold radiological monitoring records that support sick nuclear workers claims such as that of Mr. Spraggs.

In either case, Mr. Spraggs worked well over the 250 days as required by the Energy Employee Occupational Illness Compensation Program Act ("the Act") and has qualified for Special Exposure Cohort (SEC) membership/ status. Therefore, his survivors (Jerry L. Spraggs, Sharon R. Holt, and Mary Davis) are entitled to compensation per Part B of "the Act", and any compensation that may be available to them in the future per Part E.

I provide the requested EE-2 forms, along with the following CES Exhibits for your consideration:

CES Exhibit No.1 - EE- 2 Survivorship forms signed by Gary Vander Boegh, Jerry Spraggs, Sharon Holt, and Mary Davis.

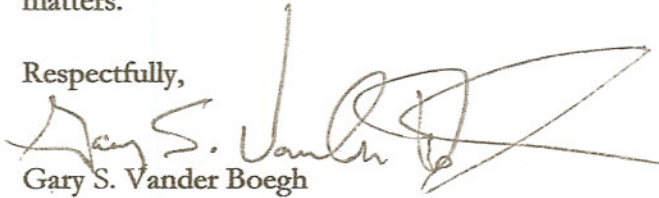
CES Exhibit No. 2 - CES/ DOL record files pages 10 thru 11- "Final Decision" letter dated October 17, 2008.

CES Exhibit No. 3- CES/ DOL record files pages 113 thru 119 notice of "Final Decision" dated October 19, 2005.

CES Exhibit No. 4- CES page 188, "Hearing Transcript" dated April 14, 2005, bladder pathology report.

Your timely response to this request is respectfully requested. Please contact me at (270) 744-3684 or by facsimile at (270) 908-0194, for further information pertaining to these matters.

Respectfully,



Gary S. Vander Boegh

"Authorized Representative"

Vice President- Commonwealth Environmental Services, LLC.

Cc/ w/attachments

President Barack Obama via facsimile (202) 228-4260

VIA FACSIMILE - 202-693-6111

The Honorable Hilda Solis

Secretary of Labor

U.S. Department of Labor

200 Constitution Avenue, NW

Room S-2018

Washington, DC 20210

National Office - Washington, D.C.

U.S. Department of Labor, DEEOIC

Room C-4511

200 Constitution Avenue, NW

Washington, DC 20210

(202)693-0081 (Main) **(202) 693-1465 (Fax)**

Director: Rachel Leiton

Deputy Director: Roberta F. Mosier

Final Adjudication Branch - Washington, D.C.

U. S. Dept. of Labor - DEEOIC

Final Adjudication Branch (FAB - National)

800 N. Capitol Street

5th Floor

Washington, DC 20211

Phone: (202)513-6400

Fax: (202) 513-6401

Senator Mitch McConnell via facsimile and email (202) 224-2499
Senator Richard Durbin via facsimile and email (202) 228-0400

Senator Harry Reid via facsimile (202) 224-7327
Senator Ted Kennedy via facsimile (202) 224-2417
Senator Jim Bunning via facsimile (202) 228-1373

Congresswoman Sheila Jackson Lee via facsimile (202) 225-3317
Congressman Henry Waxman via facsimile (202) 655-0502
Congressman Ed Whitfield via facsimile (202) 225-3547
Congressman Bart Stupak via facsimile (202) 225-4744
Congressman John Shimkus via facsimile (202) 225-5880

Claim for Survivor Benefits Under the Energy Employees Occupational Illness Compensation Program Act

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



Note: Provide all information requested below. Do not write in the shaded areas.

OMB Number: 1215-0197
 Expiration Date: 08/31/2007

1. Name (Last, First, Middle Initial) Spraggs Melvin Spraggs		2. Sex <input checked="" type="checkbox"/> Male <input type="checkbox"/> Female		3. Social Security Number 401-16-5108	
4. Date of Birth 4 20 20 Month Day Year		5. Date of Death 7 17 91 Month Day Year		6. Was an autopsy performed on the employee? <input type="checkbox"/> YES - List Medical Facility: _____ <input checked="" type="checkbox"/> NO <input type="checkbox"/> DON'T KNOW	
7. Name (Last, First, Middle Initial) Spraggs Jerry L		8. Sex <input checked="" type="checkbox"/> Male <input type="checkbox"/> Female		9. Social Security Number [REDACTED]	
10. Date of Birth 4 12 47 Month Day Year		11. Your relationship to the deceased employee <input type="checkbox"/> spouse <input checked="" type="checkbox"/> child <input type="checkbox"/> step-child <input type="checkbox"/> parent <input type="checkbox"/> grandparent <input type="checkbox"/> grandchild <input type="checkbox"/> other:			
12. Address (Street, Apt. #, P.O. Box) [REDACTED] (City, State, ZIP Code) [REDACTED]			13. Telephone Numbers a. Home: (270) [REDACTED] - [REDACTED] b. Other: (270) [REDACTED] - [REDACTED]		
<input type="checkbox"/> Cancer (List Specific Diagnosis Below)				15. Date of Diagnosis	
a. BLADDER CANCER				9 18 1990 Month Day Year	
b.					
c.					
<input type="checkbox"/> Beryllium Sensitivity					
<input type="checkbox"/> Chronic Beryllium Disease (CBD)					
<input type="checkbox"/> Chronic Silicosis					
<input type="checkbox"/> Other Work-Related Condition(s) due to exposure to toxic substance or radiation (List Specific Diagnosis Below)					
a.					
b.					
c.					
16. Did the employee work at a location designated as a Special Exposure Cohort (SEC)?				<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	
17. Have you or the deceased employee filed a lawsuit seeking either money or medical coverage for the claimed condition(s)?				<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
18. Have you or the deceased employee filed any workers' compensation claims in connection with the claimed condition(s)?				<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
19. Have you, the deceased employee, or another person received a settlement or other award in connection with the above claimed condition(s)?				<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
20. Have you either pled guilty or been convicted of any charges connected with an application for or receipt of federal or state workers' compensation?				<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
21. Have you or the employee applied for an award under Section 5 of the Radiation Exposure Compensation Act (RECA)?				<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
If yes, provide RECA Claim #:					
22. Have you or the employee applied for an award under Section 4 of the Radiation Exposure Compensation Act?				<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	

EXHIBIT No 1

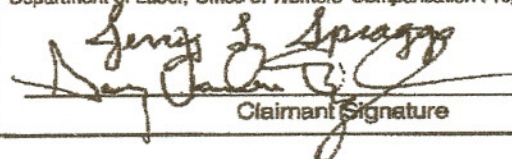
23. Are you aware of any person(s) who may also qualify as a survivor of the deceased employee? YES NO

If YES, please provide the following:

	Name	Relationship to the deceased employee	Address	Phone Number(s)
a.	Mary A. Davis	child	[Redacted]	Home: [Redacted] Other:
b.	Sharon R. Holt	child	[Redacted]	Home: [Redacted] Other:
c.				Home: Other:
d.				Home: Other:
e.				Home: Other:
f.				Home: Other:
g.				Home: Other:
h.				Home: Other:
i.				Home: Other:
j.				Home: Other:

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. Any change to the information provided on this form once it is submitted must be reported immediately to the District Office responsible for the administration of the claim. I hereby make a claim for benefits under EEOICPA and affirm that the information I have provided on this form is true. If applicable, I authorize, the Department of Justice to release any requested information, including information related to my RECA claim, to the U.S. Department of Labor, Office of Workers' Compensation Programs (OWCP). Furthermore, I authorize any physician or hospital (or other person, institution, corporation, or government agency, including the Social Security Administration) to furnish any desired information to the U.S. Department of Labor, Office of Workers' Compensation Programs.

Resource Center Date Stamp



 Claimant Signature

3-14-09
 3/14/09

 Date

Claim for Survivor Benefits Under the Energy Employees Occupational Illness Compensation Program Act

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



Note: Provide all information requested below. Do not write in the shaded areas.

OMB Number: 1215-0197 Expiration Date: 06/31/2007

1. Name (Last, First, Middle Initial) Sprague, Melvin, L		2. Sex <input checked="" type="checkbox"/> Male <input type="checkbox"/> Female	3. Social Security Number 401-16-5108
4. Date of Birth 4 20 20	5. Date of Death 9 17 91	6. Was an autopsy performed on the employee? <input type="checkbox"/> YES - List Medical Facility: _____ <input checked="" type="checkbox"/> NO <input type="checkbox"/> DON'T KNOW	

7. Name (Last, First, Middle Initial) Holt Sharon, R		8. Sex <input type="checkbox"/> Male <input checked="" type="checkbox"/> Female	9. Social Security Number [REDACTED]
10. Date of Birth 8 28 54	11. Your relationship to the deceased employee <input type="checkbox"/> spouse <input checked="" type="checkbox"/> child <input type="checkbox"/> step-child <input type="checkbox"/> parent <input type="checkbox"/> grandparent <input type="checkbox"/> grandchild <input type="checkbox"/> other:		

12. Address (Street, Apt. #, P.O. Box) P. [REDACTED] (City, State, ZIP Code)		13. Telephone Numbers a. Home: [REDACTED] b. Other: [REDACTED]	
--	--	--	--

<input type="checkbox"/> Cancer (List Specific Diagnosis Below)	14. Date of Diagnosis		
a. BLADDER CANCER	Month	Day	Year
b.	9	18	1990
c.			
<input type="checkbox"/> Beryllium Sensitivity			
<input type="checkbox"/> Chronic Beryllium Disease (CBD)			
<input type="checkbox"/> Chronic Silicosis			
<input type="checkbox"/> Other Work-Related Condition(s) due to exposure to toxic substance or radiation (List Specific Diagnosis Below)			
a.			
b.			
c.			

16. Did the employee work at a location designated as a Special Exposure Cohort (SEC)?	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
17. Have you or the deceased employee filed a lawsuit seeking either money or medical coverage for the claimed condition(s)?	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
18. Have you or the deceased employee filed any workers' compensation claims in connection with the claimed condition(s)?	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
19. Have you, the deceased employee, or another person received a settlement or other award in connection with the above claimed condition(s)?	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
20. Have you either pled guilty or been convicted of any charges connected with an application for or receipt of federal or state workers' compensation?	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
21. Have you or the employee applied for an award under Section 5 of the Radiation Exposure Compensation Act (RECA)?	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
If yes, provide RECA Claim #: [REDACTED]	
22. Have you or the employee applied for an award under Section 4 of the Radiation Exposure Compensation Act?	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO

Form EE-2 February 2008


23. Are you aware of any person(s) who may also qualify as a survivor of the deceased employee? YES NO

If YES, please provide the following:

	Name	Relationship to the deceased employee	Address	Phone Number(s)
a.	Jerry Spraggs	SON	[REDACTED]	Home: [REDACTED] Other: [REDACTED]
b.	Mary Ann Davis	daughter	[REDACTED]	Home: [REDACTED] Other: [REDACTED]
c.				Home: Other:
d.				Home: Other:
e.				Home: Other:
f.				Home: Other:
g.				Home: Other:
h.				Home: Other:
i.				Home: Other:
j.				Home: Other:

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. Any change to the information provided on this form once it is submitted must be reported immediately to the District Office responsible for the administration of the claim. I hereby make a claim for benefits under EEOICPA and affirm that the information I have provided on this form is true. If applicable, I authorize the Department of Justice to release any requested information, including information related to my RECA claim, to the U.S. Department of Labor, Office of Workers' Compensation Programs (OWCP). Furthermore, I authorize any physician or hospital (or other person, institution, corporation, or government agency, including the Social Security Administration) to furnish any desired information to the U.S. Department of Labor, Office of Workers' Compensation Programs.

Resource Center Date Stamp


Claimant Signature

3-14-09
Date

Claim for Survivor Benefits Under the Energy Employees Occupational Illness Compensation Program Act

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



Note: Provide all information requested below. Do not write in the shaded areas.		OMB Number: 1215-0197 Expiration Date: 08/31/2007
1. Name (Last, First, Middle Initial) <i>Spraggs Melvin L.</i>		2. Sex <input checked="" type="checkbox"/> Male <input type="checkbox"/> Female
3. Social Security Number <i>401-16-5108</i>		
4. Date of Birth <i>04 20 1920</i> Month Day Year	5. Date of Death <i>07 17 1991</i> Month Day Year	6. Was an autopsy performed on the employee? <input type="checkbox"/> YES - List Medical Facility: _____ <input checked="" type="checkbox"/> NO <input type="checkbox"/> DON'T KNOW
7. Name (Last, First, Middle Initial) <i>Davis Mary A.</i>		8. Sex <input type="checkbox"/> Male <input checked="" type="checkbox"/> Female
9. Social Security Number [REDACTED]		
10. Date of Birth <i>02 12 1943</i> Month Day Year	11. Your relationship to the deceased employee <input type="checkbox"/> spouse <input checked="" type="checkbox"/> child <input type="checkbox"/> step-child <input type="checkbox"/> parent <input type="checkbox"/> grandparent <input type="checkbox"/> grandchild <input type="checkbox"/> other:	
12. Address (Street, Apt. #, P.O. Box) <i>[REDACTED]</i> (City, State, ZIP Code) <i>[REDACTED] Ky [REDACTED]</i>		13. Telephone Numbers a. Home: <i>(270) [REDACTED]</i> b. Other: <i>(270) [REDACTED]</i>
<input type="checkbox"/> Cancer (List Specific Diagnosis Below)		15. Date of Diagnosis
a. <i>BLADDER CANCER</i>		Month: <i>9</i> Day: <i>13</i> Year: <i>1990</i>
b.		
c.		
<input type="checkbox"/> Beryllium Sensitivity		
<input type="checkbox"/> Chronic Beryllium Disease (CBD)		
<input type="checkbox"/> Chronic Silicosis		
<input type="checkbox"/> Other Work-Related Condition(s) due to exposure to toxic substance or radiation (List Specific Diagnosis Below)		
a.		
b.		
c.		
16. Did the employee work at a location designated as a Special Exposure Cohort (SEC)?		<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
17. Have you or the deceased employee filed a lawsuit seeking either money or medical coverage for the claimed condition(s)?		<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
18. Have you or the deceased employee filed any workers' compensation claims in connection with the claimed condition(s)?		<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
19. Have you, the deceased employee, or another person received a settlement or other award in connection with the above claimed condition(s)?		<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
20. Have you either pled guilty or been convicted of any charges connected with an application for or receipt of federal or state workers' compensation?		<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
21. Have you or the employee applied for an award under Section 5 of the Radiation Exposure Compensation Act (RECA)? If yes, provide RECA Claim #: _____		<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
22. Have you or the employee applied for an award under Section 4 of the Radiation Exposure Compensation Act?		<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO

23. Are you aware of any person(s) who may also qualify as a survivor of the deceased employee? YES NO

If YES, please provide the following:

	Name	Relationship to the deceased employee	Address	Phone Number(s)
a.	Sharon R. Holt	child	[REDACTED]	Home: 270-[REDACTED] Other: 270-[REDACTED]
b.	Jerry L. Spraggs	child	[REDACTED]	Home: 270-[REDACTED] Other: 270-[REDACTED]
c.				Home: Other:
d.				Home: Other:
e.				Home: Other:
f.				Home: Other:
g.				Home: Other:
h.				Home: Other:
i.				Home: Other:
j.				Home: Other:

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. Any change to the information provided on this form once it is submitted must be reported immediately to the District Office responsible for the administration of the claim. I hereby make a claim for benefits under EEOICPA and affirm that the information I have provided on this form is true. If applicable, I authorize the Department of Justice to release any requested information, including information related to my RECA claim, to the U.S. Department of Labor, Office of Workers' Compensation Programs (OWCP). Furthermore, I authorize any physician or hospital (or other person, institution, corporation, or government agency, including the Social Security Administration) to furnish any desired information to the U.S. Department of Labor, Office of Workers' Compensation Programs.

Resource Center Date Stamp

Mary A. Davis [Signature] 3/14/09
 Claimant Signature Date

U. S. DEPARTMENT OF LABOR

CES, LLC

EMPLOYMENT STANDARDS ADMINISTRATION
OFFICE OF WORKERS' COMPENSATION PROGRAMS
DIVISION OF ENERGY EMPLOYEES' OCCUPATIONAL
ILLNESS COMPENSATION
FINAL ADJUDICATION BRANCH



OCT 17 2008

Jerry L. Spraggs

Dear Mr. Spraggs:

Enclosed please find a Final Decision on your claim for compensation under Part B of the Energy Employees' Occupational Illness Compensation Program Act. 42 U.S.C. § 7384 *et seq.* I regret that I could not provide a favorable decision.

If you disagree with this decision, you may request reconsideration. Such a request must be in writing and must be made within **30 days** of the date of issuance of this decision. It must clearly state the grounds upon which reconsideration is being requested. The request for reconsideration should be sent to:

U.S. Department of Labor/DEEOIC
Final Adjudication Branch
Attn: District Manager (Reconsideration)
Charles E. Bennett Federal Building
400 West Bay Street, Suite 63B
Jacksonville, FL 32202

In order to ensure that you receive an independent evaluation of the evidence, the request for reconsideration will be reviewed by a Final Adjudication Branch hearing representative other than the undersigned.

If the claim was denied because you have not established covered employment under the EEOICPA and you have **new evidence** of either covered employment or exposure to a toxic substance, you may request a reopening of the claim. If the claim was denied because the cancer was not causally related to work-related exposure to radiation and you can 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, you may also request a reopening of the claim. These requests to reopen the claim must be in writing and be sent, along

EXHIBIT No. 2

with your supporting information, to the following address:

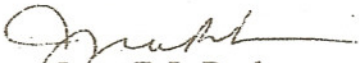
U.S. Department of Labor/DEEOICP
Attn: District Director (REOPENING)
Charles E. Bennett Federal Building
400 West Bay Street, Suite 722
Jacksonville, FL 32202

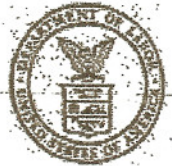
Please be advised that the final decision on your claim may be posted on the agency's website if it contains significant findings of fact or conclusions of law that might be of interest to the public. If it is posted, your final decision will not contain your file number, nor will it identify you or your family members by name.

A new claim form may be filed with the district office for any conditions you consider related to toxic exposures during employment at a Department of Energy covered facility. Any claim filed will be evaluated and/or developed for compensability under the Act.

Except as provided above, all future correspondence, inquiries or telephone calls should be directed to the Jacksonville district office. Thank you for your cooperation.

Sincerely,


Jeana F. LaRock
Hearing Representative



EMPLOYEE: Melvin L. Spraggs

CLAIMANTS: Mary A. Davis
Sharon R. Holt
Jerry L. Spraggs

CES, LLC



FILE NUMBER: [REDACTED]

DOCKET NUMBERS: 51667-2005
51669-2005
51808-2005

DECISION DATE: October 19, 2005

NOTICE OF FINAL DECISION FOLLOWING A HEARING

This is the decision of the Final Adjudication Branch concerning your claims for compensation under 42 U.S.C. § 7384s of the Energy Employees Occupational Illness Compensation Program Act of 2000, as amended, 42 U.S.C. § 7384 *et seq.* (EEOICPA or the Act). For the reasons set forth below, your claims are denied.

STATEMENT OF THE CASE

On November 26 and December 1, 2003, you filed forms EE-2, Claim for Survivor Benefits under the EEOICPA, as the children of the employee. The claimed conditions were metastatic cancer of the prostate and testicles and possible CBD (chronic beryllium disease). You submitted birth, marriage and death certificates confirming that you are children of the employee, that he died on July 17, 1991, of atherosclerotic heart disease, at the age of 71, and that his surviving spouse died on September 18, 1998.

Medical records, including August 22, 1990 and September 18, 1990 pathology reports, confirmed that your father had prostate cancer, which spread to other parts of the body, including the bladder, for which he underwent an orchiectomy. You also submitted records of treatment he received, from July 10, 1973 until his death, for other medical conditions, particularly pulmonary illnesses. The records were reviewed by physicians acting as office medical consultants on January 19, 2004 and June 1, 2004.

The EE-3 form stated that the employee worked for F.H. McGraw at the Paducah Gaseous Diffusion Plant from 1951 to 1954. The Department of Energy (DOE) could not confirm his employment, but did support that F.H. McGraw was a DOE contractor at the Paducah Gaseous Diffusion Plant during the claimed period. Affidavits (EE-4 forms) from a neighbor and two co-workers supported that your father worked at the Paducah Gaseous Diffusion Plant between 1951 and 1954. Social Security records established that he was employed by F.H. McGraw from

EXHIBIT No. 3

the second quarter of 1952 to the first quarter of 1955. The Paducah Gaseous Diffusion Plant has been a DOE facility, where radioactive materials and beryllium were present, since 1951, according to the Department of Energy (DOE) Office of Worker Advocacy Facility List website (at: <http://tis.eh.doe.gov/advocacy/faclist/findfacility.cfm>).

In order to determine the probability that your father sustained his cancer in the performance of duty, the Jacksonville district office referred your application package to the National Institute for Occupational Safety and Health (NIOSH) for radiation dose reconstruction, in accordance with 20 C.F.R. § 30.115 of the regulations implementing the EEOICPA. External and internal dose reconstruction was performed, utilizing, Dose Reconstruction Implementation Guidelines, Technical Information Bulletins, Technical Basis Documents and the computer assisted telephone interview. The dose reconstruction was done on the basis that your father was employed at the Paducah Gaseous Diffusion Plant from April 1, 1952 to March 31, 1955. On October 20, 21 and 25, 2004, you signed OCAS-1 Forms, indicating that you had reviewed the NIOSH Draft Report of Dose Reconstruction and agreed that it identified all of the relevant information you provided to NIOSH

Pursuant to 42 C.F.R. § 81.20 of the implementing Department of Health and Human Services (HHS) regulations, the district office used the information provided in this report to determine that there was no more than a 24.66% probability that the employee's cancer was caused by radiation exposure at the Paducah Gaseous Diffusion Plant.

On January 18, 2005, the district office issued a recommended decision finding that your father's cancer was not "at least as likely as not" caused by his employment at the Paducah Gaseous Diffusion Plant, within the meaning of 42 U.S.C. § 7384n of the EEOICPA. It also concluded that the medical evidence did not support that he had chronic beryllium disease, as defined in 42 U.S.C. § 7384l(13) of the EEOICPA. Therefore, it concluded, you are not entitled to compensation under 42 U.S.C. § 7384s of the Act.

By a letter dated February 2, 2005, Sharon Holt objected to the recommended decision and requested a hearing. A hearing was held in Paducah, Kentucky on April 14, 2005, during which the three of you explained why you disagreed with the recommended decision, and submitted some documents which you felt supported your decision.

OBJECTIONS

You made the following objections to recommendation to deny benefits for cancer: (1) you questioned the NIOSH findings, stating "I don't think they could have reasonable knowledge of where my father worked and what he could have been exposed to at PGDP." Your father worked in eight different areas of the plant and should probably have been monitored. [hearing transcript, page 21], (2) you questioned how claimant-favorable and maximum doses were obtained and whether monitored workers received higher doses. [hearing transcript, page 24], (3) you stated that your father car pooled "... 30 miles every day with two people that have already been awarded claims." Potential exposure from the work clothing was posited as a pathway, [hearing transcript, pages 17 and 26], (4) you stated that medical evidence supported that his cancer spread to his bladder, resulting in his undergoing an orchiectomy [hearing transcript, pages 22-23 and 25].

In order to be eligible for compensation for a non-specified cancer, such as prostate cancer, under 42 U.S.C. § 7384s of the Act, the employee's cancer must have been "at least as likely as not" related to the radiation dose received during employment at the covered facility.

The law and regulations provide that we must rely on NIOSH in determining reasonable estimates of the radiation dose to which an employee was exposed. Their methodology is binding on the Final Adjudication Branch (FAB). The methodology for computing the probability that a cancer was related to radiation exposure during covered employment is also established by regulations of the Department of Health and Human Services (HHS) and is binding on the FAB.

Your first two objections, as noted above, concern the accuracy of the dose reconstruction. Specific issues were voiced regarding how the dose reconstruction was performed since the employee was unmonitored and the consideration of the work environment in the dose reconstruction. The basic principle of dose reconstruction is to characterize the occupational radiation environment to which a worker was exposed using available worker and/or workplace monitoring information. In cases where radiation exposures in the workplace environment cannot be fully characterized based on available data, default values based on reasonable scientific assumptions are used as substitutes. The approaches for determining your father's external and internal dose are discussed in detail in his dose reconstruction report and are summarized below.

External dose records received from the Department of Energy were reviewed. NIOSH determined that the employee was not monitored for external radiation exposure during his employment. However, his occupation indicates he may have a potential to have worked in proximity to radioactive materials. Therefore, a claimant-favorable unmonitored photon dose was assigned in accordance with the Technical Basis Document for the Paducah Gaseous Diffusion Plant – Site Description. The external dose to the prostate was determined by using the dose calculated for the bladder. As a laborer, the employee worked at various locations throughout the site. Based on his work locations and his occupation he was likely exposed to photon and electron radiation. However, electron doses were not evaluated in this dose reconstruction due to the type of cancer.

Because your father's occupation indicated that he may have worked in proximity to radioactive materials, NIOSH assigned a claimant-favorable unmonitored dose as part of this dose reconstruction. He was assigned a dose equal to that of the maximum dose recorded for a worker for each year of his employment at the Paducah Gaseous Diffusion Plant in accordance with the Technical Basis Document for the Paducah Gaseous Diffusion Plant – Site Description. No maximum dose was available for 1952 so the highest maximum dose for any year (1956) was assigned for 1952. The employee was assigned an unmonitored dose for 1952–1955. The assignment of unmonitored doses addresses the issue raised in the second objection that other monitored workers might have received more claimant favorable doses.

In addition to the estimated dose received from site operations, the dose received from diagnostic X-ray procedures that were required as a condition of employment was also included in the overall dose to the prostate. This X-ray dose incorporates a multiplication factor of 1.3 to ensure claimant favorability.

NIOSH reviewed your father's employment records, and no records of bioassay monitoring results were found. Internal monitoring programs are applied to individuals who are likely to be exposed to radiation from internally-deposited radioactive material. Personnel who are not selected for internal dose monitoring programs are less likely to be exposed. However, to account for any incidental dose that may have been received but not documented, internal dose was assigned based on a hypothetical intake assuming an intake of 28 radionuclides. This results in an intake that greatly exceeds any possible actual intake by the employee because this level of activity would be expected to be detectable by workplace indicators. Additionally, these nuclides would not all be found in a single location on site.

For the purposes of the dose reconstruction, NIOSH assigned your father the highest reasonably possible radiation dose related to radiation exposure and intake using maximizing assumptions in the absence of documented exposures. The discussion above demonstrates that NIOSH used maximizing and claimant-favorable assumptions in the dose reconstruction, which addresses the issue raised in the first objection. The NIOSH approach is based on current science, documented experience and relevant data. These objections are challenges of the dose reconstruction methodology and cannot be addressed by the FAB per 20 C.F.R. 30.318(b).

The third objection suggests that radiological exposure from the contaminated clothing of other workers in his car pool could have been a potential exposure pathway. Site practices were such that workers were monitored for contamination prior to leaving a contaminated area, and other site practices and procedures would indicate if contamination was present in non-radiation areas such as administrative areas, exit points from the site, and lunch rooms. It is unlikely that the potential transfer of contamination from other workers to your father by hand-to-hand contact or by inhalation of contamination from clothing, if present, would be significant in light of the maximized dose assigned by NIOSH. The internal dose from the hypothetical intake and the external ambient dose assigned are more than adequate to account for dose from the types of situations proposed in your objection. This is a challenge of the dose reconstruction methodology and cannot be addressed by the FAB per 20 C.F.R. 30.318(b).

Concerning the fourth objection, it should be noted that the recommended decision did not deny, and the medical evidence does support, that the prostate cancer spread to the bladder and that your father underwent an orchiectomy. However, the evidence does not support that he had any primary cancer, other than the prostate cancer.

You also objected to the denial of benefits for chronic beryllium disease (CBD). Specifically, (1) you noted that even brief exposures to beryllium can be dangerous, (2) you questioned a difference in the reports of two consultants who reviewed the file, and, (3) you reviewed some of the medical evidence in the file, including x-ray reports, and explained why you believed it demonstrated that your father had a severe pulmonary condition which may have been CBD.

It is undisputed that your father did have exposure to beryllium during his employment at the Paducah Gaseous Diffusion Plant. The basis for the recommendation to deny benefits was that the medical evidence did not support that he had CBD, as that condition is defined in the EEOICPA.

The consultant who reviewed the case on January 19, 2004, Dr. Craig Glazer, was asked if blood gas tests showed results consistent with CBD. He responded that, considered in context with the other evidence, they did not. Dr. Jonas Kalnas, the consultant who reviewed the case on June 1,

2004, was asked (more appropriately, given the language of the Act) if the blood gas and pulmonary function tests showed obstructions, restrictions or a diffusing capacity defect, and he responded that they did. As you were informed at the hearing [page 32 of the transcript], they were asked different questions and gave different answers. It should also be noted that Dr. Kalnas was able to review additional medical reports which you submitted after the review of Dr. Glazer.

Dr. Glazer and Dr. Kalnas agreed that the evidence supported a clinical course consistent with a chronic respiratory disorder, and this is clearly indicated by the medical evidence in the case file. A report of August 25, 1979 indicated that your father had been disabled by emphysema for eight years, and an admission note of April 13, 1990 stated that he had severe emphysema, bronchitis and COPD, adding that he "continues to smoke."

Chest x-rays of October 2, 1984, February 19, 1986 and October 10, 1988 stated that your father had a calcified granuloma of the right upper lobe, indicative of an old healed granulomatous disease. However, no x-rays supported that he had multiple granulomas, or a granuloma in any other part of the lungs. Both Dr. Glazer and Dr. Kalnas reviewed the evidence and concluded that the x-rays reports did not show abnormalities consistent with CBD. At the bottom of page two of his report, Dr. Kalnas described the type of x-ray findings which are consistent with CBD.

It should be noted that the file does not support that your father ever underwent a beryllium lymphocyte proliferation test (LPT), or other immunologic test, showing he had beryllium sensitivity. The evidence also does not include any pathology report showing findings in the lungs consistent with CBD.

Upon review of the case record, the undersigned makes the following:

FINDINGS OF FACT

You filed claims for survivor benefits on November 26 and December 1, 2003, under the BEOICPA.

You are children of the employee, who died on July 17, 1991, of atherosclerotic heart disease, at the age of 71. His surviving spouse died on September 18, 1998.

He worked for a Department of Energy (DOE) contractor, at the Paducah Gaseous Diffusion Plant between April 1, 1952 and March 31, 1955. During that time, it was a Department of Energy facility where radioactive material was being processed, and where beryllium was present.

The employee had prostate cancer, confirmed by an August 22, 1990 pathology report. He also had a clinical course consistent with a chronic respiratory disorder and pulmonary function tests showing an obstructive defect. His chest radiographs did not show abnormalities characteristic of CBD. He had no lung pathology reports consistent with CBD and did not undergo any abnormal LPT or other immunologic test demonstrating beryllium sensitivity.

NIOSH reported annual dose estimates for prostate cancer from the date of initial radiation exposure during covered employment, to the date the cancer was first diagnosed. A summary

and explanation of information and methods applied to produce these dose estimates are documented in the "NIOSH Report of Dose Reconstruction under EEOICPA."

Based on the dose reconstruction performed by NIOSH, the district office calculated the probability of causation (the likelihood that the cancer was caused by radiation exposure incurred while working at a covered facility) for the prostate cancer. The district office determined that the cancer was not "at least as likely as not" (a 50% or greater probability) related to employment at the covered facility.

Based on these facts, the undersigned makes the following:

CONCLUSIONS OF LAW

The purpose of the EEOICPA, as stated in its section 7384d(b), is to provide for "compensation of covered employees and, where applicable, survivors of such employees, suffering from illnesses incurred by such employees in the performance of duty for the Department of Energy and certain of its contractors and subcontractors". 42 U.S.C. § 7384d(b).

Section 30.111(a) of the regulations governing the EEOICPA states that except "where otherwise provided in the Act and these regulations, the claimant bears the burden of proving by a preponderance of the evidence the existence of each and every criterion necessary to establish eligibility under any compensable claim category set forth in section 30.110." 20 C.F.R. § 30.111(a).

Compensation may be paid, pursuant to 42 U.S.C. § 7384s of the Act, to a "covered employee" (or his eligible survivor), which, under 42 U.S.C. § 7384l(1), includes a "covered employee with cancer". A "covered employee with cancer" includes an individual with a non-specified cancer, such as prostate cancer, "if and only if that individual is determined to have sustained that cancer in the performance of duty", which means "if, and only if, the cancer...was at least as likely as not related to employment at the facility specified...based on the radiation dose received by the employee...at such facility", pursuant to 42 U.S.C. §§ 7384l(9)(B) and 7384n of the EEOICPA.

The Act also provides, in 42 U.S.C. § 7384n(d), for establishing "methods for arriving at reasonable estimates of the radiation doses received" by employees who were not monitored, inadequately monitored or for whom the records of exposure are missing or incomplete. The regulations governing the EEOICPA state that the "methodology used by HHS in arriving at reasonable estimates of the radiation doses received by an employee...is binding on the FAB." 20 C.F.R. § 30.318(b). The regulations also state that the "methodology that OWCP uses to determine if a claimed cancer was at least as likely as not related to employment" is "established by regulations issued by HHS" and "is also binding on the FAB". 20 C.F.R. § 30.318(c).

The evidence supports that you are the children of the employee, that he dies on July 17, 1991, that his surviving spouse died on September 18, 1998, that he was diagnosed with prostate cancer, and that he worked at the Paducah Gaseous Diffusion Plant, a DOE facility where radiation and beryllium were present. The Final Adjudication Branch independently analyzed the information in the NIOSH report, confirming the 24.66% probability of causation. Therefore, the evidence does not support that your father's cancer was at least as likely as not related to radiation exposure during his covered employment.

Section 7384l(13)(B) of the EEOICPA provides that, for diagnoses made before 1993, chronic beryllium disease may be established by "any three of the following... (I) Characteristic chest radiographic... abnormalities... (II) Restrictive or obstructive lung physiology testing or diffusing lung capacity defect. (III) Lung pathology consistent with chronic beryllium disease... (IV) Clinical course consistent with a chronic respiratory disorder... (V) Immunologic tests showing beryllium sensitivity". As noted above, the medical evidence includes pulmonary testing showing obstruction and records indicating a clinical course consistent with a chronic respiratory disorder. However, the evidence does not include chest radiographs with abnormalities characteristic of CBD, lung pathology consistent with CBD or immunologic tests showing beryllium sensitivity. Since the employee met only two of the criteria (II and IV) the evidence does not establish chronic beryllium disease, as defined in 42 U.S.C. § 7384l(13)(B) of the Act.

It should be noted that your father also could not meet the definition of CBD diagnosed after January 1, 1993, since that would require an abnormal beryllium LPT, as stated in 42 U.S.C. § 7384l(8)(A),(13)(A) of the EEOICPA.

For the foregoing reasons, the undersigned hereby denies your claims for compensation under 42 U.S.C. § 7384s of the EEOICPA. Adjudication of your claims under 42 U.S.C. § 7385s is deferred pending further development.

Washington, DC


Richard Kerets
Hearing Representative
Final Adjudication Branch



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DEPARTMENT OF LABOR

DEPARTMENT OF ENERGY EMPLOYEES OCCUPATIONAL ILLNESS

COMPENSATION PROGRAM

File No. [REDACTED]

Claimant: Sharon R. Holt

TRANSCRIPT OF PROCEEDINGS

HEARING REP: Linda Parker
DATE: April 14, 2005
PLACE: Paducah Resource Center
Barkley Court, Unit 125
125 Memorial Drive
Paducah, KY 42001
TIME: 2:55 p.m.
REPORTED BY: Gary Goin,
York Stenographic Services

RECEIVED OMO/CECIC
2005 MAY -6 P 12:43
FINAL ACQUISITION SEARCH
JACKSONVILLE, FLORIDA

York Stenographic Services, Inc.
34 North George St., York, PA 17401 - (717) 854-0077

EXHIBIT No. 4

1 MS. HOLT:

2 Well, I thought she probably had it copied in
3 there.

4 HEARING REPRESENTATIVE:

5 Okay. Let's just double-check. Could
6 somebody show me what it looks like?

7 MS. HOLT:

8 This.

9 MS. DAVIS:

10 Well, do you want to just take mine?

11 MS. HOLT:

12 That's the path report. I've got the
13 operative report where the chips were removed
14 from the bladder. So let me just give her
15 this whole thing here. I don't think...

16 HEARING REPRESENTATIVE:

17 Let's go off the record for just a second.

18 ***

19 [Off the record]

20 [On the record]

21 ***

22 HEARING REPRESENTATIVE:

23 We are back on the record. We were off to
24 determine if Exhibit 6 contained copies of the
25 pathology reports relating to the testimony of
York Stenographic Services, Inc.

34 North George St., York, PA 17401 - (717) 854-0077