Congress Proposes Reforms to Make EEOICPA Work Better for Sick Workers

Senators Jeff Bingaman (D-NM) and Jim Bunning (R-KY), and Congressmen Ted Strickland (D-OH) and Ed Whitfield (R-KY) introduced bills (S. 3058 and H.R. 5493) in the fall of 2002 to reform some of the biggest shortcomings in the Energy Employees Occupational Compensation Program Act (EEOICPA) of 2000. These bills can be found on the internet at http://thomas.loc.gov. Reform legislation is likely to be reintroduced in the 108th Congress, thereby providing a rallying point for reform to the compensation program. The proposed reforms are summarized below.

PROPOSED CHANGES:

**EEOICPA Subtitle B (Federal Workers Compensation Claims)**

- Add chronic renal disease and beryllium-related lung cancer to the list of covered diseases.
- Add work-related mercury disease (S. 3058 only)
- 180 day time limit on NIOSH Special Exposure Cohort determinations;
- Revise formula for deciding whether to compensate cancer survivors by providing claimants with the benefit of the doubt and eliminate smoking as a factor in deciding whether to compensate lung cancer cases;
- Add an Ombudsman to assist claimants under Subtitle B and D
- Authorize the use of affidavits when medical records are missing
- Request NIOSH to expand the list of radiogenic cancers for those who are in Special Exposure Cohorts

**Subtitle D (State Workers Compensation Claims)**

- The Department of Labor (DOL) would be designated as the “willing payer” for all occupational disease claims approved by the DOE’s Physicians Panel, and remove the requirement to go through state workers’ compensation programs. Funds to pay these claims would come from the EEOICPA Fund at the DOL. Benefits would be paid at the same level as the Federal Employee Compensation Act (FECA).
- The DOE would be authorized to use the former worker medical screening programs for medical diagnostic services and exposure assessments when such information is requested by the DOE/DOL.

**Provisions of the WHPP**

Among the most glaring omissions from the DOE Former Worker Medical Screening Program are the Y-12 and Oak Ridge National Laboratory (ORNL) facilities in Oak Ridge, Tennessee. Exceptionally hazardous work was performed at these large facilities. The Atomic Trades & Labor Council (ATLC), the umbrella organizations for many of the unions with members at these two facilities, has worked hard over the past two years to obtain a program for its members. We in collaboration with A TLC—have proposed a nine-month needs assessment to determine what the major hazards at Y-12 and ORNL were and what type of medical surveillance should be offered to its former workers. We will intensively review all exposure and health studies from these programs to determine what the most helpful and appropriate medical screening will be used for the targeted worker population. We will also map out the industrial hazards using workers as site experts, and identify the best ways to reach former workers to let them know about the upcoming program.

The new screening project will use the most successful aspects of the Worker Health Protection Program in order to attempt to replicate the outstanding record of success that WHPP has achieved for workers at the gaseous diffusion plants and INEL. PACE will assist in giving birth to this program, but after the initial needs assessment is completed, ATLC will work directly with Queens College and CPS Environmental to establish its own former worker medical screening program. Let’s chalk up yet another success of the Worker Health Protection Program, that it will give rise to a very useful, relevant program for workers at Y-12 and ORNL.

**U.S. Representative Zach Wamp**

**U.S. Senator Jim Bunning**

**U.S. Senator Jeff Bingaman**

**Volume 2, Issue 5 Winter 2003**

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**Total number of payments made:...............................** 6,529

**Amount of compensation paid................................** $468 million

**Claims with final approval .....................................** 7,483

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**UPDATE ON FEDERAL COMPENSATION CLAIMS (as of 2/6/03)**

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Health Watch

This newsletter issue provides background and a status report on the new process for applying for state workers' compensation benefits under the act that Congress passed in 2000 to facilitate compensation of DOE workers for occupational diseases. This matter is both extremely important and enormously difficult.

For decades, workers' compensation has been almost entirely dysfunctional for helping workers who have developed occupational diseases. Except for the most obvious occupational illnesses (for instance, those that produce immediate toxicity or are unquestionably tied to the workplace, such as lead poisoning), the State workers' compensation systems have universally failed in fulfilling one of its basic functions, to compensate and to pay the medical bills of workers who develop illnesses as a result of work. The system was designed to address injuries, not illnesses. This problem is by no means unique to the atomic sector, as public and private employers have suffered the same neglect from workers' compensation systems. It is a sad commentary about how workers are viewed in the American society that, when ill as a result of the job, they are treated so poorly.

At the direction of Congress, the Department of Energy is trying to change the way that its employees go through the workers' compensation systems of the various states. DOE has made some progress. Using occupational medicine physicians from around the country to objectively review occupational disease claims from DOE workers is an improvement over the current system, where workers rarely have access to an occupational medicine physician. DOE has engaged some state workers' compensation systems, and is exploring how to overcome some of the administrative and legal barriers that prevent deserving claims from being successful. And Secretary of Energy Spencer Abraham has publicly confirmed his support for this process.

However, collapsing 60 years of complicated history into a workable system is daunting, even under the best circumstances. Some contractors no longer exist; others no longer serve as prime contractors. Many states have long since run out of federal workers' compensation money. It should be the employer, whether that is the Department of Energy or another public or private employer. Usually, though, it is the worker, his or her family and the rest of us. How is that? The ill worker who does not get workers' compensation benefits is left to bear so much of the huge burden of being sick from workplace exposures.

Two important factors make it even more so. First, the Department of Energy accepts paying the bill for occupational illnesses among DOE workers, and it has, then it would be far more fair and efficient to pay workers directly rather than through state workers' compensation systems. That type of change was up to Congress, and such legislation has been proposed. Given the limitations of the existing law, it is likely that Congress will need to step in to provide further direction to the Department of Energy to achieve just justice for these workers. In the short term, the best we can do is to pay the right way, let us pay the right way. Most importantly, we should make sure that sick workers and their families should not continue to bear so much of the huge burden of being sick from workplace exposures.

Let's carry this argument one step further. If the Federal government accepts paying the bill for occupational illnesses among DOE workers, and it has, then it would be far more fair and efficient to pay workers directly rather than through state workers' compensation systems. That type of change was up to Congress, and such legislation has been proposed. Given the limitations of the existing law, it is likely that Congress will need to step in to provide further direction to the Department of Energy to achieve just justice for these workers. In the short term, the best we can do is to pay the right way, let us pay the right way. Most importantly, we should make sure that sick workers and their families should not continue to bear so much of the huge burden of being sick from workplace exposures.

The Holzer Clinic in Jackson, Ohio serves WHPP participants at the Piketon Gaseous Diffusion Plant. The Holzer Clinic began WHPP testing in the summer of 2001 to make it easier for people in the Jackson area to get to a clinic. The other two clinics are forty miles away and many Piketon former and current workers live in the Jackson area.) The clinic was built in 2000, making it the newest of the WHPP clinics.

The Holzer Clinic is a mobile CT scan clinic that is managed by the Department of Energy. The Holzer Clinic staff (left to right): Kim Lambert, Rachel Dunham, Dr. Dona K Frisco, Dr. Ann Losch, and Jennifer Spies.

Having the Holzer Clinic available fulfills two of the program goals: to offer participants a choice of medical providers; and to ensure geographical distribution so that participants have easy access to the clinics.

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Holzer Clinic, the Newest Addition to the WHPP Clinic Network

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Asbestos-Related Disease

Asbestos refers to a group of six different minerals that occur naturally in the environment. Asbestos is resistant to heat and because of this property has been mined and widely used in a variety of industries and products. One major use of asbestos was in building materials and insulation. The uses for asbestos that were established before 1989 are still allowable under federal law, but new uses have been banned.

Workers can still come into contact with asbestos in building materials, especially during remodeling when old, damaged walls, ceilings and pipe fittings are repaired or removed. As asbestos products deteriorate, fibers can easily disperse into the air and can then be inhaled by workers. Inhalation of asbestos fibers is the main route of exposure, but these fibers can also be swallowed and also cause skin problems.

Asbestos fibers vary in length and shape but are often microscopic in size and therefore can bypass the natural defense mechanisms of the lungs. These microscopic fibers can be de-posited into the deepest tissue of the lungs and can reside there for the remainder of a person’s life.

Exposure to asbestos increases the risk for the development of certain types of cancers, primarily of the lung, but also others such as cancers of the throat, esophagus and gastrointestinal system. Asbestos is also known to cause a rare type of lung disease—mesothelioma—a cancer of the lining of the lung.

Asbestos may also cause two types of conditions that are not cancerous. Asbestos refers to scarred lung tissue caused by asbestos fibers. The scarring makes it hard for lungs to do their job of getting oxygen into the blood. Asbestos-related pleural disease refers to the scarring or thickening of the lining of the lung (pleura).

Asbestosis, pleural scarring and asbestos-related cancer are “dose-response” diseases. This means that the more asbestos a person is exposed to, the higher the risk for developing these diseases. Also, all asbestos-related disease has a long latency period. This means that there is a long time from when a person is first exposed to asbestos to the time the disease becomes obvious.

For lung cancer, it may take 30 years after exposure to show up. For mesothelioma, it may take 40 years. Generally, asbestosis takes between 15 to 20 years to show up on a chest x-ray.

An examination by a physician trained to recognize signs of asbestos-related disease can help identify some of the health effects of asbestos. The most common test used to determine if there are lung findings from exposure to asbestos is the chest x-ray. A doctor qualified to evaluate if there is evidence of asbestos exposure on the chest x-ray is known as a B-reader. The B-reader evaluates the chest x-ray according to a system developed in 1980 by the International Labor Office (ILO) and is known as the ILO-80. This system reviews the chest x-ray film for the presence of opacities (hazy or cloudy spots), thickening of the pleura (lining of the lung), various other findings (such as emphysema), as well as the technical quality of the film.

The most common symptoms of asbestos-related lung disease are shortness of breath and cough. The symptoms may be mild to severe, depending on the extent of the scarring. If asbestos exposure has been extensive, a person may become very sick—developing severe breathing problems or breathing failure—and may even die. In addition, other medical problems, such as lung infections, can be made worse by the presence of asbestos-related lung disease. Prompt medical attention at the first sign of a chest infection is therefore recommended for individuals with asbestosis. Depending on the situation, doctors may give a flu or pneumonia vaccine as a preventive measure. While there is no current cure or treatment available for scarring of the lung, certain interventions (such as stopping cigarette smoking) can and should be implemented to help preserve breathing function.

Smoking cessation in general is a strongly recommended health practice. However, this step is even more imperative in an asbestos-exposed person who smokes. Research has shown that asbestos-exposed workers who smoke may be 59 times more likely to get lung cancer than a non-exposed worker who does not smoke.

Control of asbestos exposures should be done as a preven-tive measure. By the time asbestos-related disease appears, it is too late to reverse the damage; stopping exposure at this point only prevents the disease from getting worse.

DOE Issues Final Rules for Procedures for State Workers’ Compensation Claims

In August 2002, the DOE published its final guidelines for assisting workers with state workers’ compensation claims. These can be found at www.eh.doe.gov/advocacy. As a reminder, the Energy Employees’ Occupational Illness Compensation Program Act (EEOICP Act), federal legislation passed in October 2002 provides federal workers’ compensation for covered DOE workers with specific occupa-tional diseases – radiation-related cancers, silicosis and beryllium disease. However, this same legislation also requires DOE to help workers in applying for state compensation for occupational diseases if the disease is found to arise from exposure to toxic substances while employed at DOE facilities (EEOICP Act Subtitle B). DOE workers filing state claims for occupational disease are not limited to cancers, silicosis and beryllium disease as they are with federal claims.

Role of DOE Office of Worker Advocacy

The new final rules — Physician Panel Determinations on Beneficial Changes in the DOE Program Office’s Medical Determinations in Filing for State Worker Compensation Claims — specify how a DOE contractor employee or the survivor of a deceased employee can get help from the DOE Office of Worker Advocacy Program Office to file a claim. The first step in DOE’s assistance is to have the claim reviewed by the Office of Worker Advocacy (OWA) to determine whether the claim should be submitted to the Physician’s Panel. If OWA does determine that it is valid, a panel of three occupational medicine physici ans reviews the claim to determine if the illness was caused by the workplace exposure at DOE.

After Physician Panel review, DOE offers help on the next step — in filing the claim with the appropriate state workers’ compensation program. According to DOE Assistant Secretary Beverly Cook, “Subtitle D of the EEOICP Act does not provide for the direct payment of claims. Subtitle D says DOE will assist workers in applying for state workers’ compensation. This panel determines whether a claim is accepted. If a case is accepted, OWA reviews the claim to determine whether the doe employee is entitled to compensation.”

Specifically, the new rules cover how:

• an individual may submit an application to the DOE’s Office of Worker Advocacy Program for review and assistance;

• the Program Office determines whether to submit an application to a Physician Panel;

• the Physician Panel determines whether exposure to a toxic substance was a “significant factor which caused, contributed or aggravated the illness or death” of a DOE contractor employee; and

• appeals may be undertaken.

A positive development is that the new final DOE rules only require a simple majority of the Physicians Panel to approve a claim. At the recent DOE Safety Summit, the Secretary of Energy, Spencer Abraham, stated his intent to make the DOE compensation program “as friendly to former workers and their families as the enabling legisla-tion allowed.” He said that the DOE’s “job is to help our workers make the best case possible to Physician Review Panels and to individual state workers’ compensation boards — we should remove bureaucratic barriers with the same level of urgency we would bring to addressing a security threat on a DOE site.”

Other Provisions Specified in EEOICPA

The EEOICP Act also requires the Secretary of Energy to enter into an agreement with each state to provide assistance to DOE contractor employees who want to file a claim under that state’s workers’ compensation system, for an illness caused by exposure to a toxic substance at a DOE facility. Twelve of these agreements have been negotiated to date. States with agreements are: Alaska, California, Colorado, Idaho, Iowa, Kentucky, New Mexico, Ohio, South Caro-lina, Tennessee, Texas and Washington.

Individuals or survivors filing a state claim for radiation-related cancers, silicosis, and chronic beryllium disease (EEOICP Act Subtitle B) can also file a state claim through the Worker Advocacy Office to receive benefits, such as lost wages, not covered by the Federal compensation system.

Problems and Drawbacks Related to the Rule

If a DOE contractor was self-insured, DOE can order the contractor to pay for the state claim once there has been a positive Physician Panel finding. However, for all other contrac-tors, which are a significant number, DOE does not have the authority to make a contractor pay. For example, if a (continued on page 4)
DOE Issues Final Rules

private company like USEC or a maintenance contractor purchased insurance from a private workers’ compensation insurance carrier (such as Aetna), or in states where there is an exclusive state workers’ comp fund (such as Ohio), DOE has not yet arranged for a “willing payer” to pay claims. A “willing payer” is some entity that the DOE can meaningfully order to pay the claim without this entity losing the freedom to raise objections under state workers’ compensation law. Without a “willing payer”, claimants with a positive Physician Panel finding may not get paid. The irony is that Congress gave DOE the authority and funds to reimburse any valid DOE worker’s state claim and yet many contractors may still contest these cases because DOE is currently working to solve this glaring deficiency in the EOCICP Act.

Other drawbacks and problems include:

• As of mid-January, the DOE Office of Worker Advo- cacy had about 14,400 requests for assistance. “Assistance with a state claim” includes putting together the best case files possible that include the worker’s history and medical records. Of those, about 6,500 cases will be being worked on by DOE nurse caseworkers. The DOE has completed all the steps, including claimant approval of the case file, for about 17 of these claims; eight of these cases have been reviewed by physician panels. However, the DOE expects this num- ber to increase significantly over the next several months.

• There is no requirement that DOE provide additional medical diagnosis or exposure assessments when the Physi- cians Panel needs additional information.

• Even if a cancer claim is approved by the Department of Labor under the Special Exposure Cohort (at Oak Ridge K-25, Portsmouth and Paducah gaseous diffusion plants) and an individual receives federal compensation (lump sum & medical benefits), there is no requirement that this person will be compensated for lost wages under the state DOE rules.

How to apply for compensation

If you have an illness you believe may be related to your exposures during employment at a DOE facility, you can obtain an application for filing a federal or state claim from your DOE/DOE Resource Center (see box on page 3), from the WHPP local office or from the Worker Advocacy Program Office in Washington (state claims only).

The WHPP local offices at the various sites are eager to ensure that everyone submitting a claim submits the best possible claim file to get a positive decision from the Physicians Panel. You can get help with your claim from the WHPP representatives at each site.

Number of State Claims Filed with the DOE Office of Worker Advocacy (as of 1/30/03)

<table>
<thead>
<tr>
<th>Number of claims filed</th>
<th>Total number of claims filed</th>
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<tr>
<td>Paducah GDP</td>
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<td>INEEL</td>
<td>863</td>
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Total number of claims filed: 38,914

In April of 1999, we kicked off the Worker Health Protection Program with the first two mobile units, the Paducah, Kentucky. As I look on the many workshops I have participated in over the past 3 years, many emotions are stirred. I think of the many Cold War Veterans who have participated in the workshops, the many physi- cians conducted by the clini- cians, and the many thanks voiced by the participants. We have touched the lives of many people and through the WHPP program. Over 1800 workers from the Paducah Gaseous Diffusion Plant have received, in their words — “the best program ever.” Many of these workers have lived many years ago and therefore, this is the first physical they have had since they stopped working.

Many of these veterans labored in very hazardous condi- tions to serve their country, in an effort to win the Cold War. While serving their country they were unknowingly exposed to many hazardous substances. Many of these veterans now suffer from serious health conditions as a result of their service during employment at a DOE facility, and it is not per- fect, it is the first thing that has been done to help the workers in the 50 years the nuclear industry has been in existence. At Paducah, our group team conducts workshops, calls work- ers, calls retirees, and helps fill out questionnaires for the workers. As our numbers dwindle, we seek innovative ways to locate and contact these former workers, as we have been scattered across the country. In October of 2002, our roles expanded with the passage of the Energy Employees Occupa- tional Illness Compensation Act; we now try to instruct our participants as to their rights under this law.

I could go on and on about the many rewarding aspects of the WHPP program, but space will not permit. In closing, I would like to thank the members of the WHPP Teamwork, our CT Scan Coordinator, our WHPP CT Scan Coordinator, our THORACIC and Cardiothoracic Department at the Ohio State Medical Center’s Arthur James Cancer Hospital, in Columbus, Ohio. He commented that it was creditable that this nodule was discovered and I was advised of this in a letter from Albert Miller, WHPP ELCD Medical Director. Dr. Miller advised that I should have a follow-up scan, which was done on the mobile unit June 8, 2001. This scan confirmed the nodule and Dr. Miller, in a follow-up letter, advised that I follow up with my personal physician immediately.

On June 19, 2001, I had my initial appointment with Patrick Ross, MD, a surgeon in the Thoracic and Cardiac Unit at the Arthur James Cancer Hospital, in Columbus, Ohio. He commented that it was creditable that this nodule was discovered in your scan. I suppose that he meant because it was so small. No doubt, he also meant I was a very fortunate person to have it discovered early. I certainly think so.

Dr. Ross had me taking CT scans at the Columbus fa- cility about every three months, watching if the nodule had changed or not. Normal it until April 23, 2002. I had a scan that day followed by an appointment with Dr. Ross. They found another nodule in the upper lobe of my right lung. Dr. Ross advised me that both nodules need to get removed and he did so May 31, 2002. The pathology report advised that they were malignant. The one in the lower lobe was described as “well-differentiated mucinoid (colloid) carcinoma, 1 cm in greatest dimension…..” and the one in the upper lobe was described as “well-differentiated mucinoid (colloid) carcinoma, 1 cm in greatest dimension…..”.

I am sending Amy Manowitz of your organization a copy of this pathology report. In this regard, I would like to say how much I appreciate Ms. Manowitz’ s help, and that of Rosa, and also Dr. Miller, in setting up appointments, follow- up, and their very kind concern.

Thank You Letter from ELCD Participant

Dear Dr. Markowitz,

This is a “Thank You Letter.” My explanation of that statement involves nothing at all with the Portsmouth Gaseous Diffusion Plant in Piketon from 1952 to 1995, working in various capacities. As a result, I entered the Workers Health Protection Program and received a CT scan of my lungs on your mobile unit April 21, 2001. A nodule on my right lung, in the lower lobe, was discovered and I was advised of this in a letter from Albert Miller, WHPP ELCD Medical Director. Dr. Miller advised that I should have a follow-up scan, which was done on the mobile unit June 8, 2001. This scan confirmed the nodule and Dr. Miller, in a follow-up letter, advised that I follow up with my personal physician immediately.

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To find out if you are eligible for the WHPP Early Lung Cancer Detection Program, call our toll-free number 1-866- 228-7228.

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