

with beryllium. If I agree to be removed, I understand that I may be transferred to another job for which I am qualified (or can be trained for in a short period) and where my beryllium exposures will be as low as possible, but in no case above the action level. I will maintain my total normal earnings, seniority, and other benefits for up to two years if I agree to be permanently removed.

I understand that if I apply for another job or for insurance, I may be requested to release my medical records to a future employer or an insurance company.

I understand that my employer will maintain all medical information relative to the tests performed on me in segregated medical files separate from my personnel files, treated as confidential medical records, and used or disclosed only as provided by the Americans with Disability Act, the Privacy Act of 1974, or as required by a court order or under other law.

I understand that the results of my medical tests for beryllium will be included in the Beryllium Registry maintained by DOE, and that a unique identifier will be used to maintain the confidentiality of my medical information. Personal identifiers will not be included in any reports generated from the DOE Beryllium Registry. I understand that the results of my tests and examinations may be published in reports or presented at meetings, but that I will not be identified.

I consent to having the following medical evaluations:

- // Physical examination concentrating on my lungs and breathing
- // Chest X-ray
- // Spirometry (a breathing test)
- // Blood test called the beryllium-induced lymphocyte proliferation test or Be-LPT
- // Other test(s). Specify:

\_\_\_\_\_  
Signature of Participant:

Date: \_\_\_\_\_

I have explained and discussed any questions that the employee expressed concerning the Be-LPT, physical examination, and other medical testing as well as the implications of those tests.

Name of Examining Physician: \_\_\_\_\_

\_\_\_\_\_  
Signature of Examining Physician:

Dated: \_\_\_\_\_

**PART 852—GUIDELINES FOR PHYSICIAN PANEL DETERMINATIONS ON WORKER REQUESTS FOR ASSISTANCE IN FILING FOR STATE WORKERS' COMPENSATION BENEFITS**

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852.19 What is the effect of the acceptance by the Program Office of a determination by a Physician Panel in favor of an applicant?

AUTHORITY: 42 U.S.C. 7384, *et seq.*; 42 U.S.C. 2201 and 7101, *et seq.*; 50 U.S.C. 2401 *et seq.*

SOURCE: 67 FR 52853, Aug. 14, 2002, unless otherwise noted.

### § 852.1 What is the purpose and scope of this part?

(a) This part implements Part D of the Act by establishing the procedures under which:

(1) An individual may obtain and submit an application to the Program Office for review and assistance;

(2) The Program Office processes and submits eligible applications to a Physician Panel;

(3) Physician Panels determine whether the illness or death of a DOE contractor employee arose out of and in the course of employment by a DOE contractor and through exposure to a toxic substance at a DOE facility;

(4) The Program Office processes a determination by a Physician Panel; and,

(5) Appeals may be undertaken.

(b) This part covers applications filed by or on behalf of a DOE contractor employee, or a deceased employee's estate or survivor, with respect to an illness or death of a DOE contractor employee that may have been caused by exposure to a toxic substance during the course of employment at a DOE facility.

(c) All actions under this part must be pursuant to the relevant State Agreement and consistent with its terms and conditions.

### § 852.2 What are the definitions of terms used in this part?

*Act* means the Energy Employees Occupational Illness Compensation Program Act of 2000, 42 U.S.C. 7384 *et seq.*

*Applicant* means an individual seeking assistance from the Program Office in filing a claim with the relevant State workers' compensation system, including but not limited to, a living DOE contractor employee, the estate of a deceased DOE contractor employee, or any survivor of a deceased DOE contractor employee who is eligible to apply for a death benefit or a survivor's

benefit under the State workers' compensation system for which the applicant is seeking assistance in filing a claim.

*DOE* means the U.S. Department of Energy, and its predecessor agencies, including the Manhattan Engineering District, the Atomic Energy Commission, and the Energy Research and Development Administration.

*DOE contractor employee* means any of the following:

(a) An individual who is or was in residence at a DOE facility as a researcher for one or more periods aggregating at least 24 months.

(b) An individual who is or was employed at a DOE facility by

(i) An entity that contracted with DOE to provide management and operation, management and integration, or environmental remediation at the facility; or

(ii) A contractor or subcontractor that provided services, including construction and maintenance, at the facility.

*DOE facility* means any building, structure or premise, including the grounds upon which such building, structure, or premise is located:

(a) In which operations are, or have been, conducted by, or on behalf of DOE (except for buildings, structures, premises, grounds, or operations covered by Executive Order No. 12344, dated February 1, 1982 (42 U.S.C. 7158 note), pertaining to the Naval Nuclear Propulsion Program); and

(b) With regard to which DOE has or had

(i) A proprietary interest; or

(ii) Entered into a contract with an entity to provide management and operation, management and integration, environmental remediation services, construction, or maintenance services.

*Physician panel* means a group of three physicians appointed by the Secretary of Health and Human Services, pursuant to Part D of the Act, to evaluate potential claims of DOE contractor employees under the appropriate State workers' compensation system.

*Program office* means the Office of Worker Advocacy within DOE's Office of Environment, Safety and Health, or

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any other DOE office subsequently assigned to perform the functions of the Secretary of Energy under Part D of the Act.

*State agreement* means an agreement negotiated between DOE and a State that sets forth the terms and conditions for dealing with an application for assistance under Part D of the Act in filing a claim with the State's workers' compensation system.

*Toxic substance* means any material that has the potential to cause illness or death because of its radioactive, chemical, or biological nature.

#### **§ 852.3 How does an individual obtain and submit an application for review and assistance?**

(a) An individual obtains an application for review and assistance:

(1) In person from the Program Office, from any of the Resources Centers listed in Appendix A to this section, or from any DOE-sponsored Former Worker Program project;

(2) Through a written request mailed to Assistant Secretary, Office of Environment, Safety and Health, Office of Worker Advocacy, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585. or to any other address that DOE may subsequently publish by notice in the FEDERAL REGISTER;

(3) Through telephone request to 1-877-447-9756 or to any other telephone number that DOE may subsequently publish by notice in the FEDERAL REGISTER; or

(4) In printable format, from the Program Office's Web site at <http://tis.eh.doe.gov/advocacy/> or from any other Web site that DOE may subsequently publish by notice in the FEDERAL REGISTER.

(b) An individual submits an application for review and assistance—

(1) In person to the Program Office, to any Resource Center, or to any DOE-sponsored Former Worker Program project.

(2) By mail to the Program Office at the address identified in paragraph (a)(2) of this section, or to any other address that DOE may subsequently publish by notice in the FEDERAL REGISTER.

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#### **§ 852.4 What information and materials does an individual submit as a part of the application for review and assistance?**

(a) As a part of the application for review and assistance, an individual must submit, in writing:

(1) Any application forms required by the Program Office.

(2) The name and address of any licensed physician who is the source of a diagnosis based upon documented medical information that the employee has or had an illness and that the illness may have resulted from exposure to a toxic substance while the employee was employed at a DOE facility and, to the extent practicable, a copy of the diagnosis and a summary of the information upon which the diagnosis is based.

(3) A signed medical release, authorizing non-DOE sources of medical information to provide the Program Office with any diagnosis, medical opinion and medical records documenting the diagnosis or opinion that the employee has or had an illness and that the illness may have resulted from exposure to a toxic substance while the employee was employed at a DOE facility.

(4) To the extent practicable and appropriate, an occupational history obtained by a physician, an occupational health professional, or a DOE-sponsored Former Worker Program. (If such an occupational history is not reasonably available and is deemed by the Program Office to be needed for the fair adjudication of the claim, then the Program Office will assist the applicant in obtaining this history.)

(5) Any other information or materials deemed by the Program Office to be necessary to provide reasonable evidence that the employee has or had an illness that may have arisen from exposure to a toxic substance while employed at a DOE facility.

(b) The applicant may also submit directly to the Program Office any other information or materials providing evidence that the employee has or had an illness that may have resulted from exposure to a toxic substance during the course of employment at a DOE facility.

(c) The applicant must sign an affidavit attesting to the authenticity and

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completeness of any information or materials submitted to the Program Office, or provide the Program Office with other evidence of authenticity of submitted materials, such as certification of submitted copies of originals.

### § 852.5 What information and materials may an employer submit in response to a submission of an application to a Physician Panel?

(a) Upon receipt of an application and the Program Office's determination that the application meets the requirements of § 852.4, the Program Office must notify each of the applicant's relevant DOE contractor employers in writing of:

- (1) The existence of the application;
- (2) The name of the employee;
- (3) The diagnosis claimed; and
- (4) The likely date of onset or date of diagnosis, if known.

(b) The employer has 15 working days from receipt of this notification to submit to the Program Office any information deemed by the employer to be relevant to either the Program Office's determination of whether to refer an application to a Physician Panel, or to adjudication of the application by a Physician Panel.

(c) The employer must sign an affidavit attesting to the authenticity and completeness of any information provided to the Program Office under this section, or provide the Program Office with other evidence of authenticity of submitted materials, such as certification of submitted copies of originals.

### § 852.6 Which applications are submitted to a Physician Panel?

(a) The Program Office must submit an application and any information submitted under § 852.5 of this part to a Physician Panel if there is reasonable evidence to make an initial determination that:

- (1) The application was filed by or on behalf of a DOE contractor employee or a deceased DOE contractor employee's estate or survivor;
- (2) The illness or death of the DOE contractor employee may have been caused by exposure to a toxic substance; and,
- (3) The illness or death of the DOE contractor employee may have been related to employment at a DOE facility.

(b) The Program Office must promptly notify the applicant in writing of an initial determination under this section.

### § 852.7 What provisions are set forth in State Agreements?

DOE may not execute a State Agreement that does not contain the following provisions:

(a) A statement that an application is submitted to a Physician Panel only if the application satisfies the criteria in § 852.6 of this part:

(1) The application was filed by or on behalf of a DOE contractor employee or a deceased DOE contractor employee's estate or survivor;

(2) The illness or death of the DOE contractor employee may have been caused by exposure to a toxic substance; and

(3) The illness or death of the DOE contractor employee may have been related to employment at a DOE facility.

(b) An agreement that a Physician Panel must apply the standards set forth in § 852.8 of this part when making a determination that an illness or death arose from exposure to a toxic substance during the course of employment at a DOE facility;

(c) An agreement that the Program Office must provide assistance to only those applicants with a positive determination from the Physician Panel; and

(d) An agreement that a positive determination by the Physician Panel has no effect on the scope of State workers' compensation proceedings, the conditions for compensation, or the rights and obligations of the participants in the proceeding; provided that consistent with Part D of the Act such a determination will prevent DOE and may prevent a DOE contractor from contesting an applicant's workers' compensation claim.

### § 852.8 How does a Physician Panel determine whether an illness or death arose out of and in the course of employment by a DOE contractor and exposure to a toxic substance at a DOE facility?

A Physician Panel must determine whether the illness or death arose out of and in the course of employment by a DOE contractor and exposure to a

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toxic substance at a DOE facility on the basis of whether it is at least as likely as not that exposure to a toxic substance at a DOE facility during the course of employment by a DOE contractor was a significant factor in aggravating, contributing to or causing the illness or death of the worker at issue.

### **§ 852.9 What materials must a Physician Panel review prior to making a determination?**

The Physician Panel must review all records relating to the application that are provided by the Program Office, including but not limited to:

- (a) Medical records;
- (b) Employment records;
- (c) Exposure records;
- (d) Occupational history;
- (e) Workers' compensation records;
- (f) Medical literature or reports;
- (g) Any other records or evidence pertaining to the applicant's request for assistance;
- (h) A medical examiner's report, coroner's report, or death certificate for any application submitted by an estate or survivor of a deceased worker; and
- (i) Information submitted as a part of such a claim or developed by the Department of Labor (DOL) or by the Department of Health and Human Services (HHS) in the course of processing a claim for the applicant, including, where applicable, estimates of an applicant's cumulative radiation dose and the calculated probability that this dose was responsible for a cancer that is the subject of the claim, for any application submitted by an applicant also applying to DOL for benefits available under the Act.

### **§ 852.10 How may a Physician Panel obtain additional information or a consultation that it needs to make a determination?**

If, after reviewing all materials provided by the Program Office, a Physician Panel finds that it needs additional information or consultation with a specialist in order to make a determination, it must request this information or consultation through the Program Office. A Physician Panel may request:

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(a) A recorded interview under oath with the applicant, by an individual designated by the Program Office, if the Physician Panel believes only the applicant can provide the necessary information.

(b) That the applicant provide additional medical information;

(c) Additional relevant information under the control of DOE or its contractors;

(d) Consultation with designated specialists in fields relevant to its deliberations;

(e) Specific articles or reports, or assistance searching the medical or scientific literature; or

(f) Other needed information or materials.

### **§ 852.11 How is a Physician Panel to carry out its deliberations and arrive at a determination?**

(a) Each panel member reviews all materials relating to the application.

(b) All panel members meet in conference, in person, or by teleconference in order to discuss the application and arrive at a determination agreed to by a majority of the members of the Physician Panel.

### **§ 852.12 How must a Physician Panel issue its determination?**

A Physician Panel must submit its determination under § 852.8 and the findings that provide the basis for its determination to the Program Office. The determination and the findings must be in writing and signed by all panel members. The findings must include:

(a) Each illness or cause of death that is the subject of the application.

(b) For each illness or cause of death listed under paragraph (a) of this section:

- (1) Diagnosis;
- (2) Approximate date of onset;
- (3) Date of death, if applicable;
- (4) Whether the illness or death arose out of and in the course of employment by a DOE contractor and exposure to a toxic substance at a DOE facility;
- (5) The basis for the determination under paragraph (b)(4) of this section;
- (6) A determination concerning any other medical issue identified in the relevant State Agreement; and

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(7) The basis for the determination under paragraph (b)(6) of this section.

(c) The Physician Panel must provide the Program Office with:

(1) Any evidence to the contrary of the panel's determination, and why the panel finds this evidence is not persuasive.

(2) A listing of information and materials reviewed by the panel in making its determination, including:

(i) Information and materials provided by the Program Office; and,

(ii) Information and materials obtained by the panel, including consultations with specialists, scientific articles, and the record of any interview with an applicant.

(3) Any other information the panel concludes that the Program Office should have in order to understand the panel's deliberations and determination.

### **§ 852.13 When must a Physician Panel issue its determination?**

(a) A Physician Panel must submit its determination and findings to the Program Office within 30 working days of the time that panel members have received the complete application for review from the Program Office.

(b) The Program Office may extend the deadline for a panel determination under the following circumstances:

(1) The Physician Panel indicates to the Program Office that it needs additional information or a consultation in order to carry out its deliberations, as provided for in § 852.10. In this case, the panel's determination is due 15 working days after receipt of the additional information (or notice from the Program Office that the requested information is unavailable), or 15 working days after receiving the consultant's recommendations, whichever is applicable; or

(2) The Physician Panel has requested and the Program Office has granted an extension.

(c) If an extension is granted pursuant to section 852.13(b)(2), the Program Office will specify the new deadline.

### **§ 852.14 What precautions must each Physician Panel member and each specialist take in order to keep an applicant's personal and medical information confidential?**

In order to maintain the confidentiality of an applicant's personal and medical information, each Physician Panel member and each specialist consulted at the request of a Physician Panel must take the following precautions:

(a) Maintain the confidentiality of applicant records, keep them in a secure, locked location, and, upon completion of panel deliberations, follow the instructions of the Program Office with regard to the disposal or temporary retention of these records;

(b) Conduct all case reviews and conferences in private, in such a fashion as to prevent the disclosure of personal applicant information to any individual who has not been authorized to access this information;

(c) Release no information to a third party, unless authorized to do so in writing by the applicant; and

(d) Adhere to the provisions of the Privacy Act of 1974 regarding Worker Advocacy Records.

### **§ 852.15 What actions must a Physician Panel member take if that member has a potential conflict of interest in relation to a specific application?**

(a) If a panel member has a past or present relationship with an applicant, an applicant's employer, or an interested third party that may affect the panel member's ability to objectively review the application, or that may create the appearance of a conflict of interest, then that panel member must immediately:

(1) Cease review of the application; and

(2) Notify the Program Office and await further instruction from the Office.

(b) The Program Office must then take such action as is necessary to assure an objective review of the application.

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### **§ 852.16 When may the Program Office ask a Physician Panel to reexamine an application that has undergone prior Physician Panel review?**

The Program Office may direct the original Physician Panel or a different Physician Panel to reexamine an application that has undergone prior Physician Panel review if:

- (a) There is significant evidence contrary to the panel determination;
- (b) The Program Office obtains new information the consideration of which would be reasonably likely to result in a different determination;
- (c) The Program Office becomes aware of a real or potential conflict of interest of a member of the original panel in relation to the application under review; or
- (d) Reexamination is necessary to ensure consistency among panels.

### **§ 852.17 Must the Program Office accept the determination of a Physician Panel?**

- (a) Subject to the ability of the Program Office to direct a reexamination pursuant to § 852.16, the Program Office must accept the determination by the Physician Panel unless the Program Office determines there is significant evidence contrary to the panel determination.
- (b) The Program Office must promptly notify an applicant and the relevant DOE contractor(s) of its acceptance or rejection of a determination by a Physician Panel.

### **§ 852.18 Is there an appeals process?**

- (a) An applicant may request DOE's Office of Hearings and Appeals (OHA) to review:
  - (1) A decision by the Program Office not to submit an application to a Physician Panel;
  - (2) A negative determination by a Physician Panel that is accepted by the Program Office; and
  - (3) A final decision by the Program Office not to accept a determination in the applicant's favor by a Physician Panel.
- (b) An applicant must file a notice of appeal with OHA on or before 30 days from the date of a letter from the Program Office notifying the applicant of

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a determination appealable under this section.

(c) An appeal under this section is subject to the procedures of OHA in 10 CFR Part 1003.

(d) A decision by OHA constitutes DOE's final determination with respect to an application.

### **§ 852.19 What is the effect of the acceptance by the Program Office of a determination by a Physician Panel in favor of an applicant?**

In the event the Program Office accepts a determination by a Physician Panel in favor of an applicant:

- (a) The Program Office must assist the applicant in filing a claim with the relevant State's workers' compensation system by providing the determination and other information provided to the Program Office by a Physician Panel pursuant to § 852.12 of this part;
- (b) The Program Office may not contest the determination;
- (c) The Program Office must advise the cognizant DOE Secretarial Officer to recommend to the Contracting Officer (CO) for a DOE contractor that, to the extent permitted by law, the CO direct the contractor not to contest an applicant's workers' compensation claim or award in any administrative or judicial forum with respect to the same health condition for which the applicant received a favorable final Physician Panel determination;

(d) Any costs of contesting a claim or award identified in paragraph (c) of this section—that is, any costs of supporting arguments or activities with the intent or effect of delaying or defeating such a claim or award—are not allowable costs under a DOE contract; and,

(e) All workers' compensation costs incurred as a result of a workers' compensation award on a claim based on the same health condition that was the subject of a positive Physician Panel determination are allowable, reimbursable contract costs to the full extent permitted under the DOE contractor's contract with DOE.