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From:
Sent: Friday, January 13, 2006 4:11 PM
To: NIOSH Docket Office
Cc:
Subject: Interim Final Rule Request for Comment

NIOSH Docket Officer. Via e-mail: NIOCINDOCKET@cdc.gov

Agency: Department of Health and Human Services

Subject: Interim final rule request for comments

Amending procedures to consider designating classes of employees to be added to the Special Exposure Cohort under the Energy Employees Occupational Illness Compensation Program Act of 2000. EEOICP, 42 U.S.C. 7384-7385

Author:

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Forward: I am one of three surviving children of (EEOICP Claim number : NIOSH Tacking Number) a now deceased employee of the Hanford Project. The survivors have an active claim under the EEOICP and are presently waiting an appeal decision. NIOSH has accepted the following:

1. My Father was employed at the Hanford Project
2. He had met the 250-day employment requirement
3. He was exposed to certain levels of radiation during his employment.
4. Dose Reconstruction has concluded the he had a 36.26% probability of causation of cancer.
5. My fathers' cause of death was Cancer.

My comments are as follows. I request that amendments to the Special Cohort Classes be approved by the Department of Heath and Human Services that would include (A) The Hanford Project to the Special Exposure Cohort list and (B) a change be made in the Specific Cancers listing found in Section 3621(17) of EEOICP (42U.S.C. 7384(17) and the DOE regulation implementing EEOICP (20 CFR 30.5(dd)).

(A) Granting the Hanford Project Special Cohort Status. In light of the "new" science revisited in the S. Cohen Audit currently in the news, the use of Dose Reconstruction process by NIOSH is highly suspect as the decision base for denial of compensation. It is unfortunate that NIOSH and the Final Adjudication Branch has ignored their own statement "The Dose Reconstruction in not the final determination of a claim, but rather an interim product that is used by the Department of Labor in making its final decision". Through the history of the EEOICP it is well documented that the data available for Dose Reconstruction and employee monitoring is of questionable value.

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Our family is one of many that has been denied just compensation due to the arbitrary threshold of the Dose Reconstruction process, The threshold established by the "Probability of Causation Guidelines in 42 CFR Part 81 is being used as the one and only consideration in claim acceptance or refusal. In light of "New Science", especially that revealed in the audit by S. Cohen and Associates, it is apparent to me that the Board Comment #3 page 22307 should be enacted. "The Board also agrees the proposed NIOSH procedures appropriately allow for the incorporation of new scientific information into the compensation procedures as this new information becomes available." However, I concur with Senator Maria Cantwell (D-Washington) that the chances that the NIOSH Board will in any expeditious manner come forth with a revision of the threshold problem is bureaucratically improbable. In her press releases she has mentioned the simple way to proceed with current claims is to grant Special Cohort Status to Hanford Employees. This will eliminate the highly controversial arbitrary threshold problem. In that case the five points mentioned in my forward would be deemed sufficient for compensation, with one exception.

(B) 42 CFR Part 83.5(m) lists "Specified Cancer". As with the threshold problem I also request that the Board consider removing the restriction on the type and location of cancers. The list is unfairly restrictive to victims of radiation exposure during their employment. Case in point is that (k) Urinary Bladder Cancer is one of the accepted cancers under the Special Cohort Regulations. My Father died of Cancer, a cancer not on the list. In the Dose Reconstruction Process the Urinary Bladder was used as the model for the Cancer Analysis as NIOSH claims there is no known model for the Cancer. I question the rationale of using the Urinary Bladder as a model for the Cancer while the Cancer is not on the specific Cancer List and cancer of the Urinary Bladder is. Current research indicates that exposure to radiation is a cause of cancer and cancer to more organs than those listed in the regulations.

In summary I would gladly share with the committee the volumes of research I have compiled on this subject. I believed that it was the intent of Congress to fairly compensate employees and their survivors for the unfortunate experience of suffering from cancer as a result of radiation exposure during their employment. The existing rules conflict with current science and both the use of Dose Reconstruction and the Special Cohort Program need to be revised, as they result in decisions of denial of claims scientifically and morally unfair to claimants.

Sincerely

January 12, 2006

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