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United States Senate

COMMITTEE ON HEALTH, EDUCATION,
LABOR, AND PENSIONS

WASHINGTON, DC 20510-6300

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<http://help.senate.gov>

June 28, 2010

Mr. Shelby Hallmark, Director
Office of Workers' Compensation Programs
U.S. Department of Labor
Frances Perkins Building
200 Constitution Ave., NW
Washington, DC 20210

Dear Mr. Hallmark:

I am writing to request that you use the authority granted to you by the Energy Employees Occupational Illness Compensation Program to reopen the Part E claim for survivor benefits filed by Ethelwyn Fellingner. Mrs. Fellingner's husband, Michael Fellingner was an employee at the Ames Laboratory in Ames, Iowa between 1967 and 1972 as well as a short term employee at Argonne and Ferni National Laboratories. Mr. Fellingner developed pulmonary fibrosis and esophageal cancer and died in 2008 subsequent to filing of his claim but prior to adjudication. The survivor claim filed by Mrs. Fellingner has been repeatedly denied by your office.

I believe that this case unfortunately illustrates flaws in the administration of the Part E program both with regard to the qualification of the District Medical Consultants (DMCs) and with regard to consistency in the overall adjudication of similar claims. I hereby request that the case be reopened and assigned for a review to a board certified pulmonologist who has not previously been assigned to this matter.

Mr. Fellingner developed pulmonary fibrosis in 1993 and was diagnosed with adenocarcinoma of the esophagus in 2003. During his five years of employment, Mr. Fellingner was employed as a technician at the Ames laboratory a metallurgical facility with well documented presence of pneumoconiotic agents including asbestos and thorium.

The Fellingner claim was initially assigned to a District Medical Consultant who apparently lacked expertise in lung disease. The DMC twice denied the claim, apparently as a result of lack of understanding of Mr. Fellingner's exposure even with the documented presence of pneumoconiotic agents during his term of employment or basic knowledge regarding latency periods of pneumoconiosis which is typically 20 years from exposure.

The Final Adjudication Branch twice raised issues with the denials resulting, finally, in assignment of the case to a Board certified Pulmonologist as a referee. A legitimate dispute then arose between that Board certified pulmonologist, Dr. Boyan, and the physician of record for the Fellingner claim, Dr. Laurence Fuortes of the University of Iowa. Essentially, Dr. Boyan maintains that the presence of diffuse alveolar damage (DAD) on Mr. Fellingner's 2004 biopsy is determinative that the lung disease could not be a work related pneumoconiosis. Dr. Fuortes feels strongly that this is not a medically accurate opinion and submitted additional medical literature demonstrating the presence of DAD in pneumoconiosis cases together with the informal opinions of other experts. He is particularly frustrated that based on his own Freedom of Information Act requests, it appears that the opinions of other experts and additional medical literature may not have been shared with Dr. Boyan.

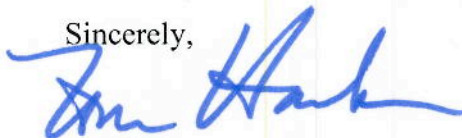
In cases of disagreement such as that between Dr. Boyan and Dr. Fuortes, EEOICPA regulations provide for an independent third opinion. However, your office maintains that because the claim never reached a qualified DMC prior to the referee stage, all of the process provided under the statute is now exhausted and no independent review is available.

I am also concerned by the fact that at least one case that appears medically similar to the Fellingner claim has been compensated by your office and that the main distinction that has been drawn in the case related to the longer period of employment at Ames lab of the compensated former employee. It is imperative that this program be able to demonstrate equity in compensation of similar claims.

Claims filed under Part E, particularly those with long latency typical of workers at the Ames Laboratory, can raise challenging issues that require the participation of well respected occupational health experts. That does not appear to have occurred in the particular claim at issue. I respectfully request that you revisit this decision and forward the claim for independent review by a qualified third party.

I look forward to continuing our long history of working together to ensure that EEOICPA fairly compensates nuclear workers and their families who were exposed to very dangerous substances without their knowledge and to ensuring that the program operates in our nation's best interest.

Sincerely,



Tom Harkin
United States Senator