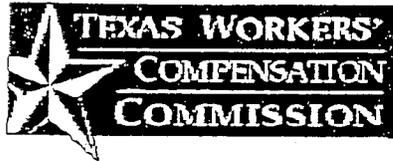


Exhibit # 47



FACSIMILE TRANSMITTAL SHEET

TO: Kate Kimpan FROM: Heidi Jackson
 COMPANY: Dept of Energy DATE: 11-8-01
 FAX NUMBER: 202.586 7350 TOTAL NO. OF PAGES INCLUDING COVER:
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- URGENT FOR REVIEW PLEASE COMMENT PLEASE REPLY PLEASE RECYCLE

NOTES/COMMENTS:

Please forward my
 comments to the
 appropriate staff.
 Thank you.



TEXAS
WORKERS' COMPENSATION COMMISSION
4000 SOUTH I-35, MS-30, AUSTIN, TEXAS 78704-7491
(512) 804-4000

November 7, 2001

Via Facsimile and E-Mail

Ms. Loretta Young
Office of Advocacy, EH-8
U.S. Department of Energy
1000 Independence Avenue
Washington D.C. 20585
Attention: Physicians Panel Rule

Re: Comments on DOE proposed rules to implement Subtitle D of the Energy
Employees Occupational Illness Compensation Program Act of 2000

Dear Ms. Young:

I am submitting these comments on behalf of the Texas Workers' Compensation Commission, ("the Commission") the agency in Texas that will be working with the DOE Office of Worker Advocacy in applicable cases.

These comments track the points discussed under II. Discussion of Proposed Rule.

K. What Provisions Does a State Agreement Contain?
§ 852. 6

The Commission agrees that it is appropriate for the DOE to rely on State standards for screening applications for the physicians' panels. The criteria the Commission proposes to be in the Agreement with Texas are that:

- 1) the employee or person acting on the employee's behalf has notified or will notify the employer of an occupational disease injury not later than the 30th day after the date the employee knew or should have known that the disease may be related to the employee's employment unless the employer or the insurance carrier has actual knowledge of the employee's occupational disease injury, and
- 2) the employee or the person acting on the employee's behalf has filed or will file with the Commission a claim for compensation of the occupational disease injury not later than one year after the date the employee knew or should have known that the disease was related to the employee's employment.

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These two factors are the threshold for filing a workers' compensation claim for an occupational disease/illness under Texas law. Tex Labor Code §§ 409.001 and 409.003. If the Program Office determines that the applicant has not provided adequate information to show that these criteria to pursue the claim are met, the applicant is not precluded from pursuing the claim *without* the assistance of the Program Office.

Without a statutory change to the Texas Labor Code providing authority to do so, the State cannot simply "agree" that the opinion of the physicians' panels would have presumptive weight on medical issues. However, the panel's opinion could be considered as any other medical evidence in a State proceeding. Likewise, it would not be appropriate to agree to across-the-board delays of State proceedings to wait for physicians' panels' opinions. Nevertheless, continuances can be granted or agreed to by the parties for the gathering of medical evidence on a case-by-case basis.

L. What is a Toxic Substance?

§852.2

The Commission believes that the broader definition is more reasonable than the narrower option because it would have a higher probability of being accepted universally. The definition utilized by the Centers for Disease Control would be a reliable reference.

N. How does the Program Office Decide What Applications to Submit to a Physicians Panel?

§852.5

The proposed conditions appear appropriate. The Commission does not have further recommendations to this provision. The two criteria identified in the comments to section K above indicate agreement with the concept of timeliness requirements and the standard of knowing or should have known that the disease may be work related as appropriate criteria for screening.

The Commission does not agree that the Program Office should have more limited criteria for screening out potential applicants based on a level of evidence required to support a claim. More stringent criteria is not consistent with the intent of the entitlement provisions under sections 401.011(10) and 401.011 (26) of the Texas Labor Code as it would force screening out the vast majority of applicants and refer few to the physicians panels for review.

The Commission does not choose to provide screening on a reimbursable or other basis at least without further specific information and agreement to such factors as reimbursement amounts; reimbursement time lines; administrative requirements such as how to select doctors and paperwork requirements; screening requirements and any audit or sanction provisions. In addition, any state agency rules pertaining to such screening would have to meld with existing statutory requirements concerning areas such as the effect of the Commission's designated doctors utilized to resolve disputes such as compensability.

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The Commission believes that a proper screening mechanism performed by the Program Office, utilizing the state criteria such as those identified above, would be consistent with the statutory framework in Texas, because it would have no bearing on the claimant's ability/right to pursue a claim on his or her own without federal assistance.

O. What Guidelines Does a Physicians Panel Use To Determine Whether an Illness Arose Out of and in the Course of Employment by a DOE Contractor and Exposure to a Toxic Substance at a DOE Facility?

§ 852.7

The Commission agrees that the "more likely than not" standard is reasonable for determining whether an applicant is going to receive assistance from the DOE in pursuing a state workers' compensation claim.

P. What Materials Should a Physicians Panel Review Prior to Making a Determination?

§ 852.8

The Commission believes the materials listed in the proposed rule are appropriate for the review of the physicians' panels. The panels should not be required to consider any specific State criteria that are not already included in the list as a prerequisite for making a medical determination.

Q. How may a Physicians' Panel Obtain Additional Information or a Consultation That it Needs to Make a Determination?

§852.9

The Commission understands that it may be appropriate for the DOE to establish a mechanism for paying for the development of medical documentation for an applicant. Any such mechanism should include at a minimum time lines for completion, payment for costs incurred by the injured worker such as transportation and payment for development of documentation and how such documentation can be used in state dispute resolution.

Further, the Commission believes any such mechanism should elaborate on the type and method of assistance to be provided to an injured worker if a physicians' panel makes a positive determination and the Program Office accepts it. For example, would certified medical records be made available or would the medical staff be made available for telephonic testimony in state dispute resolution proceedings? In addition, a positive determination and acceptance by the Program Office may be necessary *prior* to a determination of the validity of a workers' compensation claim under state law because:

- 1) the compensation issue determination should not become final prior to input from the physicians' panel, and
- 2) the positive determination could be an important factor in the state dispute resolution process.

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Should you have any questions regarding these comments, please call me at (512) 804-4012 or e-mail me at heidi.jackson@twcc.state.tx.us.

Thank you for your consideration of the Commission's comments.

Yours truly,



Heidi H. Jackson
Director of Hearings

HHJ/cc
cc: Richard Reynolds
Virginia May
Craig Smith