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Testimony of Congressman Ted Strickland
Department of Energy Rulemaking Hearing
Guidelines for Physicians Panel Determinations on Worker Requests for Assistance in Filing for
State Workers' Compensation Benefits, to Implement the Energy Employees Occupational
Illness Compensation Program Act (EEOICPA)
October 25, 2001

Thank you for this opportunity to share with you the serious concerns Congressman Strickland has regarding the Department of Energy's proposed regulations issued on September 7, 2001 addressing the Department's Physicians Panel under the Energy Employees Occupational Illness Compensation Program Act signed into law last fall. Congressman Strickland has been an advocate for DOE workers made sick by no fault of their own and he continues to work with Senators DeWine and Voinovich to see that this new compensation program functions as Congress envisioned it would.

The September 7, 2001 regulations were required by Congress to assist workers filing claims with state worker compensation programs for illnesses related to their employment in DOE nuclear weapons factories. Under the law, Congress intended to create a uniform federal system for a narrow class of DOE contractor employees to determine whether a worker's occupational illness arose out of the course of employment. And, if such a link was found to exist by a Physicians Panel, then the Secretary of Energy would instruct its contractor to refrain from opposing a merited worker compensation claim. Congressman Strickland fears that these proposed regulations completely fail to address the desire of Congress to assist workers through a uniform federal system by imposing numerous obstacles contained in state workers' compensation programs. Under the regulations as written, claimants must satisfy state worker compensation eligibility criteria before the DOE even refers workers to the Physicians Panel for a medical evaluation. This thwarts the efforts of Congress to ensure uniformity in this program by layering 50 states' different criteria upon this defined group of workers. Under the rule as written, he questions whether workers filing with their state compensation programs will benefit at all from the landmark compensation law signed last year?

The Energy Employees Occupational Illness Compensation Program Act sets up two criteria by which eligibility for compensation should be measured: 1) the application must be filed by or on behalf of a former DOE contractor employee or employee's estate, and 2) the illness or death of the Department of Energy contractor employee may have been related to employment at a Department of Energy facility. Subtitle D of the law discusses further that if reasonable evidence exists to meet these two eligibility criteria, the Secretary shall submit the application to a physicians panel which would make a medical determination regarding causality. Using the Memorandum of Agreement with the states, also authorized in Subtitle D of the law, to turn this process on its head by requiring claimants to meet state criteria prior to review by a Physicians Panel, in all likelihood means few or no workers would receive compensation they couldn't already receive. We have learned that state compensation programs, as determined by a National Economic Council report last year, are not particularly well-suited to provide worker compensation for occupational disease because, for example, the states' laws differ on statutes of limitations and establish varying burdens of proof with respect to causation. ~~Again~~ This report

illustrates the need for a Uniform Federal Standard/Regimen
 emphasizing that the potentially broad range of state eligibility criteria ^{that are} would be crosswise with
 the Congressional intent to create a uniform federal program.

Ohio's Bureau of Workers' Compensation stated at a May 15 Senate Health, Education, Labor and Pensions hearing that "while [we] believe workers' compensation should, without a doubt, be regulated at the state level, this specific instance could benefit from federal assistance."

Congressman Strickland believes that the testimony from Ohio's Workers' Compensation Bureau supports the intent of Congress to establish a uniform federal program ~~because of the~~ unique circumstances surrounding this program that may render it nearly impossible for an employee to make his or her way through the state system. Congressman Strickland strongly urges the Department to reconsider its proposed approach to assist sick workers in receiving compensation through state programs and issue a rule which comports with the Congressional intent to create an efficient, uniform and adequate compensation system.

by discussion