

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of STEPHEN KIRKS and DEPARTMENT OF JUSTICE, FEDERAL BUREAU OF PRISONS, FEDERAL CORRECTIONAL INSTITUTION, Bastrop, Tex.

*Docket No. 96-2628; Submitted on the Record;  
Issued April 9, 1998*

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DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,  
MICHAEL E. GROOM

The issue is whether appellant has met his burden of proof in establishing that he has pulmonary tuberculosis due to factors of his federal employment.

On February 16, 1996 appellant, then a 48-year-old maintenance worker supervisor, filed a claim for pulmonary tuberculosis, indicating that he had a positive skin test. In a June 19, 1996 decision, the Office of Workers' Compensation Programs rejected appellant's claim on the grounds that the fact of injury had not been established.

The Board finds that appellant has not met his burden of proof in establishing that he has tuberculosis or any other condition that is causally related to factors of his employment.

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed;<sup>1</sup>; (2) a factual statement identifying the employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;<sup>2</sup> and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.<sup>3</sup> The medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between

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<sup>1</sup> See *Ronald K. White*, 37 ECAB 176, 178 (1985).

<sup>2</sup> See *Walter D. Morehead*, 31 ECAB 188, 194 (1979).

<sup>3</sup> See generally *Lloyd C. Wiggs*, 32 ECAB 1023, 1029 (1981).

the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant,<sup>4</sup> must be one of reasonable medical certainty,<sup>5</sup> and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>6</sup>

Appellant claimed that a skin test showed he had tuberculosis. He indicated that the tuberculosis germ was prevalent in a correctional environment. Appellant stated that inmates are screened but it could take several weeks before a positive skin would appear. He commented that inmates later could become active long before the medical staff at the employing establishment would become aware. Appellant indicated that he had no knowledge of inmates who would have tuberculosis because of medical confidentiality. He noted that his family had tested negative for tuberculosis. Appellant submitted some medical evidence in support of his claim. A culture of sputum showed no active fast bacilli.<sup>7</sup> A chest x-ray was negative.

Appellant has not established that he has tuberculosis as the sputum culture and chest x-ray were negative for any evidence of tuberculosis. The positive skin test, by itself, is not sufficient to show that he has tuberculosis. Appellant has not submitted any report from a physician who definitively stated that he had active tuberculosis. He therefore has not submitted sufficient medical evidence to show the existence of a disease. Appellant also offered only speculation that the positive skin test resulted from exposure to an infected inmate. There is no evidence of record that would show appellant was exposed to tuberculosis at the employing establishment.<sup>8</sup> Appellant therefore has not met his burden of proof in establishing that he has an occupational disease causally related to his federal employment.

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<sup>4</sup> *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

<sup>5</sup> *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

<sup>6</sup> *See William E. Enright*, 31 ECAB 426, 430 (1980).

<sup>7</sup> "The finding of AFB (acid-fast bacilli) in a sputum smear is a strong presumptive evidence of TB (tuberculosis) but a definitive diagnosis is made only on results of culture." *The Merck Manual of Diagnosis and Therapy*, p. 134 (16th ed. 1992).

<sup>8</sup> On appeal appellant submitted additional evidence on the presence of tuberculosis among inmates at the employing establishment. However, the Board's review is limited to the evidence that was before the Office at the time it issued its final decision. 20 C.F.R. § 501.2. The Board therefore cannot consider this new evidence on appeal.

The decision of the Office of Workers' Compensation Programs, dated June 19, 1996, is hereby affirmed.

Dated, Washington, D.C.  
April 9, 1998

Michael J. Walsh  
Chairman

George E. Rivers  
Member

Michael E. Groom  
Alternate Member