

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARJORIE BODLORICK, claiming as widow of WILLARD L. BODLORICK
and DEPARTMENT OF THE NAVY, PUGET SOUND NAVAL SHIPYARD,
Bremerton, WA

*Docket No. 98-1940; Submitted on the Record;
Issued April 26, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has established that the employee's death on November 16, 1994 was causally related to his accepted employment-related asbestos exposure.

On August 3, 1995 appellant, the employee's widow, filed a claim for death benefits. She indicated on her claim form that the employee's death was causally related to asbestos-related lung disease. Appellant submitted a death certificate signed by Dr. Reimer which indicated that the cause of the employee's death was metastatic gastric cancer. In a decision dated April 2, 1998, the Office of Workers' Compensation Programs denied appellant's claim for death benefits on the grounds that the medical evidence did not establish that the employee's death was causally related to his accepted asbestos exposure.¹

The Board has carefully reviewed the entire case record on appeal and finds that appellant has not established that the employee's death was causally related to his accepted asbestos exposure.

The Federal Employees' Compensation Act provides that the United States shall pay compensation for the disability or death of an employee resulting from personal injury sustained while in the performance of duty.² However, an award of compensation in a survivor's claim

¹ The employee filed an occupational disease claim on August 6, 1990 for occupational lung disease related to asbestos exposure which he first became aware of and realized was causally connected to his federal employment in April 1989. The Office accepted that the employee had a bilateral pleural thickening in his lungs beginning April 1, 1989 due to asbestos exposure in his federal employment.

² 5 U.S.C. § 8102(a).

may not be based on surmise, conjecture or speculation, or an appellant's belief that the employee's death was caused, precipitated or aggravated by his employment.³

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that an employee's death was causally related to factors of employment. This burden includes the necessity of furnishing a rationalized medical opinion based on an accurate factual and medical background and supported by medical rationale explaining the nature of the cause and effect relationship between the employee's death and specific employment factors.⁴

An employee receiving compensation for total disability at the time of death does not establish that his death was causally related to conditions resulting from the employment injury.⁵ The mere fact that a disease manifests itself during a period of employment does not raise an inference that there was a causal relationship between the two. Neither the fact that the disease was diagnosed during such employment nor appellant's opinion that an injury accepted by the Office ultimately caused the employee's death is sufficient to establish the required causal relationship.⁶

In the present case, the Office properly declared that there was a conflict in the medical evidence regarding whether the employee's death was causally related to his accepted employment-related asbestos exposure. Dr. Samuel P. Hammar, a Board-certified pathologist and a reviewing physician for appellant's claim, believed that the employee's death due to gastric cancer was causally related to his employment-related asbestos exposure due to the concentration of asbestos bodies in lung tissue and the presence of "histologic" asbestosis. On the other hand, an Office medical adviser found that the employee's gastric cancer was not related to asbestos-related pleural thickening or possible mild pulmonary asbestosis as the employee's regularly treating physician for these conditions, Dr. Jerome E. Carbone, had not noted any pulmonary impairment due to asbestos exposure prior to the employee's death; the employee had not claimed that his gastric cancer was employment related; and medical research did not support this conclusion. As there was an unresolved conflict in the medical evidence, the Office properly referred the employee's medical record to Dr. Jonathan H. Ostrow, a Board-certified internist and pulmonary specialist, for an impartial medical examination review and report.⁷

In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of the

³ *Juanita Terry*, 31 ECAB 433 (1980).

⁴ *Kathy Marshall*, 45 ECAB 827 (1994).

⁵ *Elinor Bacorn*, 46 ECAB 857 (1995); see *Joan Leveton*, 34 ECAB 1368 (1983).

⁶ *Martha A. Whitson*, 43 ECAB 1176 (1992).

⁷ Section 8123(a) of the Act states that if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination. 5 U.S.C. § 8123(a).

resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.⁸ The Board has carefully reviewed the opinion of Dr. Ostrow and finds that it has sufficient probative value, regarding the relevant issue in the present case, to be accorded such special weight.

In a report dated March 25, 1998, Dr. Ostrow reviewed the medical evidence of record and the medical treatises provided by Dr. Hammar and the Office medical adviser in support of their respective conclusions. While Dr. Ostrow noted that there may be a slightly increased risk of gastric carcinoma in persons occupationally exposed to asbestos, he indicated that it would be incorrect to state that there was an increased risk on a “more probable than not” basis. Dr. Ostrow therefore concluded that there was no causal relationship between the employee’s former asbestos exposure and his gastric carcinoma on a “more probable than not” basis although the possibility of a minor relationship was not excluded. Thus, the impartial medical examiner found that the employee’s death was not causally related to his asbestos exposure based on a reasonably degree of medical certainty in a well-reasoned and rationalized report with a complete review of the employee’s medical record, and his report is entitled to special weight. Therefore, appellant has not established that the employee’s death was causally related to his accepted employment-related asbestos exposure.

The decision of the Office of Workers’ Compensation Programs dated April 2, 1998 is hereby affirmed.

Dated, Washington, D.C.
April 26, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

⁸ *Jack R. Smith*, 41 ECAB 691 (1990); *James P. Roberts*, 31 ECAB 1010 (1980).