

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DOROTHY W. OSBORNE (claiming as widow of JESSE R. OSBORNE and  
DEPARTMENT OF THE NAVY, NAVAL SHIPYARD, Charleston, SC

*Docket No. 99-1556; Submitted on the Record;  
Issued December 20, 2000*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether the employee's death on December 26, 1996 was causally related to factors of his federal employment.

On or about February 17, 1997 appellant filed a claim for survivor benefits following the death of her husband, a 53-year-old marine machinist, on December 26, 1996.

Appellant's husband had filed a claim for benefits on October 29, 1991, which the Office of Workers' Compensation Programs accepted for asbestosis on August 30, 1993.<sup>1</sup> The employee's death certificate indicated his death was caused by interstitial pneumonitis complicated by a bone marrow transplant, which the employee underwent in November 1996, and acute myelogenous leukemia. An autopsy was performed on December 27, 1996 by Dr. Edward W. Catalano, a Board-certified pathologist. The results of the autopsy revealed a previously diagnosed acute myelogenous leukemia refractory to treatment, a post-allogeneic bone marrow transplant and adult respiratory distress syndrome. The cause of death was listed as respiratory insufficiency associated with refractory adult respiratory distress syndrome. In a report dated February 3, 1998, Dr. Catalano advised the Office that there was documented relationship between asbestosis -- the employee's accepted condition -- and the employee's acute myelogenous leukemia.

By decision dated March 4, 1998, the Office denied appellant's claim as the evidence failed to establish that the employee's death was due to factors of his federal employment.

By letter dated December 13, 1998, appellant requested reconsideration. In support of her claim, appellant submitted a supplemental report of cause of death dated August 31, 1998,

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<sup>1</sup> By decision dated August 30, 1993, the Office accepted the claim for work-related asbestosis but denied a claim for a schedule award based on an alleged work-related lung impairment.

which was an amendment to the employee's death certificate. The report stated that an additional cause of death was asbestosis by history.

By decision dated February 8, 1999, the Office found that the medical evidence appellant submitted was not sufficient to warrant modification of the prior decision.

The Board finds that appellant has failed to meet her burden of proof in establishing that the employee's death was due to factors of his federal employment.

An appellant has the burden of proving by the weight of the reliable, probative and substantial evidence that the employee's death was causally related to his federal employment. This burden includes the necessity of furnishing medical opinion evidence of a cause and effect relationship based on a proper factual and medical background.<sup>2</sup>

The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence.<sup>3</sup> 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 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>

In this case, the Office properly found that the medical evidence appellant submitted was not sufficient to establish that the employee's death was caused by factors of his federal employment. The December 26, 1996 death certificate indicated that the causes of death were interstitial pneumonitis complicated by the November 1996 bone marrow transplant and acute myelogenous leukemia, and contained no references to the employee's employment-related asbestosis condition. The December 27, 1996 autopsy performed by Dr. Catalano indicated that the employee had, at the time of his death, a previously diagnosed acute myelogenous leukemia refractory to treatment, a post-allogeneic bone marrow transplant and adult respiratory distress syndrome, and listed the causes of death as respiratory insufficiency associated with refractory adult respiratory distress syndrome. Dr. Catalano, a Board-certified pathologist, specifically ruled out a causal relationship between the employee's accepted condition, asbestosis, and his acute myelogenous leukemia, the listed cause of death. In addition, Dr. Kuang-Yueh Chiang, the attending physician at the employee's bone marrow transplant surgery, stated on the Form CA-5 claim for death benefits that the direct cause of death was adult respiratory distress syndrome.

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<sup>2</sup> *Kathy Marshall (James Marshall)*, 45 ECAB 827, 832 (1994); *Timothy Forsyth (James Forsyth)*, 41 ECAB 467, 470 (1990).

<sup>3</sup> *See Naomi A. Lilly*, 10 ECAB 560, 572-73 (1959).

<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).

Dr. Chiang specifically indicated that the employee's death was not due to his employment-related condition, asbestosis, but was associated with acute myeloid leukemia, his primary disease. Based on this evidence, the Office properly found in its March 4, 1998 decision that appellant failed to meet her burden of proof to establish that the employee's death was caused by factors of his federal employment.

Although appellant subsequently submitted the August 31, 1998 supplemental cause of death report amending the employee's death certificate, which stated that an additional cause of death was asbestosis by history, this evidence is also not sufficient to meet appellant's burden of proof. The report is merely a declaratory statement which summarily indicates an additional cause of death, and fails to explain with reference to specific medical findings in the employee's case, how and why employment factors contributed to the employee's death. To be of probative value to appellant's claim, the medical evidence must contain a rationale which addresses the specifics, both factual and medical, of the employee's death.<sup>7</sup> The supplemental cause of death report did not provide the necessary medical rationale that the employee's employment-related exposure to asbestosis caused the employee's death. Therefore, the report is of little probative value.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that the employee's death occurred during a period of employment, nor the belief that his death was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship. Causal relationship must be established by rationalized medical opinion evidence. Appellant failed to submit such evidence and the Office therefore properly denied her claim for compensation.<sup>8</sup>

The decision of the Office of Workers' Compensation Programs dated February 6, 1999 is hereby affirmed.

Dated, Washington, DC  
December 20, 2000

David S. Gerson  
Member

Willie T.C. Thomas  
Member

A. Peter Kanjorski  
Alternate Member

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<sup>7</sup> *Victor J. Woodhams*, 41 ECAB 345, 353 (1989).

<sup>8</sup> *Id.*