U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HELEN DAVIES, claiming as widow of ARTHUR DAVIES and DEPARTMENT OF THE NAVY, BOSTON NAVAL SHIPYARD, Boston, MA

Docket No. 98-1906; Submitted on the Record;
Issued January 21, 2000

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant has met her burden of proof in establishing that the employee's death on April 11, 1995 was related to asbestos exposure during his federal employment.

The Office accepted the employee's claim for asbestos-related pulmonary disease. On July 10, 1996 appellant filed a claim for death benefits alleging that the employee, then 88 years old, died on April 11, 1995 due to lung cancer. The employee had retired on November 1, 1969.

A chest computerized axial tomography (CAT) scan dated July 5, 1995 showed calcified pleural plaques consistent with previous exposure.

On October 5, 1994 the employee was admitted to the hospital and diagnosed as having a malignant right pleural effusion with known right lower lung mass, which was an adenocarcinoma, appearing to be of lung origin.

In a report dated April 6, 1996, the district medical adviser, Dr. Barry W. Levine, a Board-certified internist, noted that the employee had asbestos exposure from working at the employing establishment from 1941 to 1968. He noted that in 1979 the employee had a calcified pleural plaque at the right lung base as well as a plaque on the left. Dr. Levine considered that Dr. Peter J. Barrett, a Board-certified nuclear medicine radiologist, interpreted the July 13, 1982 and 1986 x-rays as showing no evidence of interstitial lung disease by "ILO" criteria. He also noted that the employee's "30-pack year" smoking history ended in 1965. Dr. Levine noted that the employee's pulmonary function studies in 1983 and 1988 remained normal in their diffusion capacities. He noted that in 1994 the employee had a right lower lobe mass and pleural effusion which was diagnosed as adenocarcinoma of the lung. Dr. Levine noted that the employee had prostatic carcinoma in August 1994. He noted that one doctor found crackles in 1982 and 1983 but another doctor found no crackles in 1981.

Dr. Levine stated:

> "It is well accepted in the medical community that the association between asbestos exposure and the development of lung carcinoma must be accompanied by the presence of true asbestosis, *i.e.*, interstitial lung changes. On careful review of the medical record there is no evidence of asbestosis based on the ILO interpretations of the chest x-rays and the physiologic findings. The presence of crackles heard by one observer was not a consistent finding in the record and therefore cannot be used to confirm the diagnosis of asbestosis. Most importantly the untreated carcinoma of the prostate could have metastasized to the lung and pleural cavity. This tumor is consistent with the adenocarcinoma found on biopsy.
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> "Therefore in the absence of asbestosis and the presence of an untreated carcinoma of the prostate, I feel that the most probable cause of the lung tumor was metastatic carcinoma of the prostate. In the absence of undocumented asbestosis, [the employee] would not have been a higher risk for the development of lung carcinoma due to his prior asbestos exposure and pleural plaques."

In a report dated May 10, 1995, Dr. David C. Christiani, a Board-certified internist and preventive medicine specialist, stated that the employee suffered from asbestosis and lung cancer. He opined that asbestos exposure was therefore a substantial contributing factor to the employee's lung disease and his lung cancer which contributed to his demise. Dr. Christiani stated that his medical rationale was:

> "1. By definition, asbestosis is caused by asbestos exposure.
>
> "2. It is well established that asbestos is a carcinogen capable of causing lung cancer and mesothelioma."
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> "Lung cancer occurs particularly in individual[s] who are heavily exposed and who have smoked. [The employee] was heavily exposed as evidenced by the presence of pulmonary asbestosis, a condition which only occurs in individuals heavily exposed to asbestos. The epidemiologic and toxicologic literature is irrefutable in connecting asbestos exposure with lung cancer."

In a report dated June 20, 1997, Dr. Sidney P. Kadish, a Board-certified radiologist and a second opinion physician, considered the medical documents and reports of record, the pulmonary function studies in 1991 as well as 1983 which were normal and a chest x-ray which showed no interstitial lung disease. Dr. Kadish diagnosed asbestosis as seen in the pleural plaques related to the employee's occupational asbestos exposure. He opined that the asbestosis did not cause any functional disability or interstitial lung disease or diminished pulmonary function or malignant process associated with asbestosis or pleural mesothelioma. Dr. Kadish also diagnosed lung cancer which "probably" arose from the extensive smoking habit and prostate cancer which did not significantly impact on the employee's life. He opined that the adenocarcinoma of the lung which was biopsied and treated with radiation caused destruction by a metastatic process in the right ninth rib which "undoubtedly" came from cigarette smoking.

Dr. Kadish stated that he disagreed that the cause of the lung tumor was metastatic carcinoma of the prostate as prostate carcinoma "almost never metastasizes to the lung." He opined that the employee who had a "clearcut" smoking history "undoubtedly had a separate lung cancer in the right lower lobe which was caused by smoking and was treated with radiation from which he died."

By decision dated March 2, 1998, the Office denied the claim, stating that the evidence of record failed to establish that the employee's death was related to factors of his federal employment.

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 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.[1] The medical evidence required to establish causal relationship is rationalized medical opinion evidence explaining how the accepted employment-related condition caused or contributed to the employee's death.[2] The mere showing that an employee was receiving compensation at the time of death does not establish that the employee's death was causally related to his employment.[3]

The Board finds that appellant has not met her burden of proof in establishing that the employee's death on April 11, 1995 was related to his asbestos exposure during his federal employment.

The May 10, 1995 opinion of Dr. Christiani is not sufficiently rationalized to establish that the employee's death resulted from asbestosis. Although Dr. Christiani opined that asbestos exposure was a substantial contributing factor to the employee's lung disease and lung cancer which contributed to his demise, in providing a rationale, he made general statements that "it is well established that asbestos is a carcinogen capable of causing lung cancer and mesothelioma" and "the epidemiologic and toxicologic literature is irrefutable in connecting asbestos exposure with lung cancer." He did not, however, explain specifically in appellant's case how the asbestos exposure resulted in lung cancer other than to say asbestos exposure can cause lung cancer. Dr. Christiani's statements are too general to establish appellant's claim.[4]

In his June 20, 1997 report, Dr. Kadish stated that the employee's lung cancer "probably" arose from his cigarette smoking but he also stated based on the pulmonary function studies and x-rays that the absence of any functional disability or interstitial lung disease precluded a finding that the employee's asbestosis resulted in interstitial lung disease, diminished pulmonary function or malignant process associated with asbestosis or pleural mesothelioma. With his

[1] *Carolyn P. Spiewak (Paul Spiewak)*, 40 ECAB 552 (1989); *Mary M. DeFalco (Gordon S. DeFalco)*, 30 ECAB 514 (1979).

[2] *Edna M. Davis (Kenneth L. Davis)*, 42 ECAB 728. 733 (1991).

[3] *Elinor Bacorn (David Bacorn)*, 46 ECAB 857, 860-61 (1995).

[4] *See Durwood H. Nolin*, 46 ECAB 818, 821-22 (1995).

reliance on the objective tests, Dr. Kadish's opinion is well rationalized in determining that the employee's death due to lung cancer did not result from his asbestos exposure.

The decision of the Office of Workers' Compensation Programs dated March 2, 1998 is affirmed.

Dated, Washington, D.C.
January 21, 2000

David S. Gerson
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member