U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL W. CLARK and U.S. POSTAL SERVICE,
POST OFFICE, Oakland, CA

Docket No. 03-2261; Submitted on the Record;
Issued December 2, 2003

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has a pulmonary condition that is causally related to his asbestos exposure in his federal employment.

On June 3, 2002 appellant, then a 54-year-old painter, filed an occupational disease claim alleging that, on May 20, 2003, he became aware that he developed asbestos spots on his lungs after painting in buildings containing asbestos in his federal employment. Appellant did not stop work.

In support of the claim, appellant submitted a statement which outlined his history of asbestos exposure in the workplace. Appellant stated that he had been a postal employee for 35 years and worked in a facility built in 1969 with asbestos and lead throughout the building in the walls, ceilings, floor tiles and air ducts. He indicated that he performed painting and finishing duties incident to the maintenance and repair of buildings, furniture and equipment. Appellant indicated, in the statement, that he had been seen at Kaiser Permanente on April 12, 2001 for coughing, wheezing and shortness of breath and was treated for bronchial asthma. He further indicated that x-rays were performed on May 20, 2002 which revealed asbestos on his lungs.

Appellant later submitted a radiology report dated October 5, 2000, which indicated that there were small pleural plaques found bilaterally on chest views compatible with asbestos exposure. He also submitted a November 6, 2001 chest x-ray which revealed no significant findings.

In a letter dated June 27, 2002, the Office of Workers' Compensation Programs requested that the employing establishment submit comments on the accuracy of appellant's allegations, exposure data, air sample surveys, statements of the types of asbestos exposure, frequency, degree and duration for each job that appellant held. In a letter also dated June 27, 2002, the Office requested that appellant provide his employment history and the type of asbestos material used in each position, location where exposure occurred and period of exposure. The Office requested further that appellant describe previous pulmonary conditions and allergies and also

provide a comprehensive medical report from his treating physician including a description of his symptoms, results of examination and tests, a diagnosis and the doctor's opinion with medical reasons on the cause of the condition.

The Office thereafter received a visit questionnaire form from Kaiser Permanente which indicated that appellant was seen on June 3, 2002 for asbestos exposure and a challenge letter from the employing establishment. The employing establishment detailed an interview conducted with appellant regarding the claim on June 3, 2002 which noted that appellant initially attributed his poor condition on June 3, 2003 to his diabetes. It was noted in the letter that appellant then asserted that he was exposed to asbestos at work which was contained within the walls of the employing establishment and that he had been out of the office for symptoms related to his exposure. The Office acknowledged that there were areas in the facility where asbestos was present, however, such areas were encapsulated and contained. The employing establishment submitted documentation including certifications from asbestos consultants, air and dust sample data, indoor air quality reports, survey results for lead testing and asbestosis as requested by the Office.

In further support of the claim, appellant submitted an August 28, 2002 report from Dr. Susan Lambert, a physician from Kaiser Permanente who is Board-certified in occupational medicine. In the August 28, 2002 report, Dr. Lambert indicated that she evaluated appellant for symptoms of fatigue and shortness of breath, reviewed his occupational and medical history and examined appellant. She noted that, an April 12, 2001 chest x-ray returned normal; however, an x-ray done on July 1, 2002 revealed mild pleural plaque formation along the lower chest bilaterally. Dr. Lambert diagnosed asbestos-related pleural disease based on his extensive exposure to asbestos since 1973 and probable mild asbestosis. She stated that, although appellant's lung parenchyma was normal on x-ray, he had a history of shortness of breath and restrictive pattern on pulmonary function tests. Dr. Lambert finally diagnosed asthma by history.

The Office referred appellant for a second opinion examination with Dr. Michael Cohen, a Board-certified pulmonary specialist, for an evaluation on November 1, 2002 regarding his asbestos exposure. In a report dated November 1, 2002, Dr. Cohen noted that, during appellant's employment as a painter with the employing establishment, he had long-term exposure to asbestos but more in the form of an environmental exposure. He pointed out that appellant did not have a prolonged exposure to high concentrations of asbestos as indicated in Dr. Lambert's history. Dr. Cohen reviewed appellant's medical records and noted that appellant smoked for 10 years and then quit, had complained of shortness of breath and further that he was also diabetic for which he took medication. He discussed Dr. Lambert's review of a radiologist report which showed mild bilateral pleural plague and an earlier pulmonary function test which showed restrictive pattern with asbestos-related pleural disease and probable mild asbestosis and asthma. Dr. Cohen noted further that he found appellant's lungs clear on examination. He further reviewed a pulmonary function test taken September 27, 2002 which revealed reduced diffusion capacity but no obstruction. Dr. Cohen then discussed recent diagnostic studies taken and concluded that there was no evidence of asbestos exposure by x-ray, physical examination, history, physical or by laboratory evaluations. He noted that the x-rays dated October 5, 2000 and November 15, 2001 were normal with no evidence of pleural plaques or parenchymal abnormalities and recently that a four-view chest x-ray returned also normal. Dr. Cohen also reviewed a pulmonary function test performed on October 30, 2002 which he also indicated was

normal. He stated that there was no explanation for the reduction in diffusion in the earlier pulmonary function test and that it may be spurious since there is no evidence of lung disease. Dr. Cohen concluded that there were no objective findings to establish that appellant had any pleural abnormality or asbestosis at that time. He further opined that appellant had no permanent functional loss of his lungs resulting from his environmental type of asbestos exposure.

By decision dated November 27, 2002, the Office denied the claim on the grounds that the medical evidence failed to establish a medical condition for which compensation was claimed.

The Board finds that appellant has not established that he has an asbestos-related pulmonary condition causally related to his federal employment.

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that his condition was caused or adversely affected by his employment.[1] This burden includes the necessity of submitting medical opinion evidence, based on a proper factual and medical background, establishing such disability and its relationship to his employment.[2] Neither the fact that the condition became apparent during a period of employment, nor the belief of the employee that the condition was caused, precipitated or aggravated by factors of his employment, is sufficient to establish causal relation.[3]

The Board finds that appellant did not meet his burden of proof. The weight of the medical evidence is represented by the well-rationalized report of Dr. Cohen, a Board-certified specialist in pulmonary diseases, whose opinion was requested by the Office as a second opinion examiner to determine whether appellant's occupational exposure to asbestos has caused asbestosis as claimed. Dr. Cohen stated that recent results of objective tests performed, including a chest x-ray and pulmonary function studies, were not indicative of pulmonary fibrosis, *i.e.* asbestosis, that he had normal flow on his pulmonary function and that there was no evidence of lung disease. Although Dr. Lambert found that appellant had asbestos-related pleural disease, probable mild asbestosis and bilateral pleural plaques, the recent objective medical findings outlined by Dr. Cohen do not support those findings.

There is no rationalized medical evidence of record supporting appellant's claim for an asbestos-related pulmonary condition resulting from his exposure to asbestos in his federal employment. Appellant has, therefore, failed to meet his burden of proof.

[1] *Birger Areskog*, 30 ECAB 571 (1979).

[2] *Floyd R. Mills*, 30 ECAB 1147 (1979).

[3] *Paul Fiedor*, 32 ECAB 1364 (1981).

The decision of the Office of Workers' Compensation Programs dated November 27, 2002 is affirmed.

Dated, Washington, DC
December 2, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member