U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FLOYD STILLEY and DEPARTMENT OF DEFENSE,
DEFENSE LOGISTICS AGENCY, Cherry Point, NC

Docket No. 02-2016; Submitted on the Record;
Issued February 19, 2003

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant developed a pulmonary condition causally related to exposure to asbestos in the performance of duty.

On June 29, 2001 appellant, then a 56-year-old former material handler, filed an occupational disease claim alleging that he sustained pneumoconiosis as a result of exposure to asbestos in the course of his federal employment. In a statement accompanying his claim, appellant related that in 1985 "workers removed asbestos from Building 147 in which I was using a forklift." On the reverse side of the claim form, the employing establishment indicated that appellant had been retired for two years and was not exposed to asbestos.

In a report dated January 19, 2001, Dr. Laxminarayana C. Rao, a Board-certified internist, reviewed appellant's work history, a pulmonary function study and a chest x-ray. He noted that appellant had "significant exposure to asbestos dust" during the course of his employment. Dr. Rao interpreted a chest x-ray dated August 29, 2000 as showing bilateral interstitial fibrosis due to asbestosis. He stated:

> "On the basis of medical history review, which is inclusive of a significant occupational exposure to asbestos dust and adequate latency period as attested to, the physical exam[ination], the chest radiography and the pulmonary function testing, the diagnosis of interstitial fibrosis due to asbestosis is established within a reasonable degree of medical certainty."

By letter dated December 4, 2001, appellant related:

> "I began work in Building 147 in 1985. Asbestos was present in the building and in the pipes. My previous statement was in error. The asbestos pipes were removed in 1998, not 1985 as I previously stated. During that time I was driving a forklift in Building 147.… I was exposed to asbestos during its removal from

all five sections. This process took at least six months to complete. I was exposed on a daily basis as I went about my daily routine."

The Office of Workers' Compensation Programs referred appellant to Dr. Philip D. Mayo, a Board-certified internist, for a second opinion evaluation. In the accompanying statement of accepted facts, the Office accepted appellant's asbestos exposure as factual as the employing establishment had failed to refute the allegation.

In a report dated February 26, 2002, Dr. Mayo reviewed appellant's work history and performed a pulmonary function study and blood gas study. He diagnosed dyspnea on exertion and asbestos exposure. He stated, "[Appellant's] hx [history] certainly indicates a fairly significant exposure to aerosolized asbestos, although [his] reported lag time from exposure to symptoms would appear to be very brief." Dr. Mayo concluded:

"I do not feel that [appellant's] complaint of exertional dyspnea is secondary to his reported asbestos exposure. The opinion is based on essentially normal PFT's [pulmonary function tests] except for mild functional restriction likely on the basis of obesity, chest x-ray findings with cardiomegaly and fluid overload as opposed to interstitial fibrosis, lack of pleural or diaphragmatic calcifications/ plaques, and the very brief lag time between exposure and reported symptoms. [Appellant] would fall in the category of incidental employment exposure, and generally the exposures are of a fairly light dust burden…."

Dr. Mayo opined that appellant's cardiac problems may be causing his dyspnea.

The Office referred the case to an Office medical adviser for an opinion on whether appellant had any diagnosable condition due to asbestos exposure. On April 8, 2002 an Office medical adviser indicated that Dr. Mayo did not make a diagnosis of asbestosis.

By decision dated May 15, 2002, the Office denied appellant's claim on the grounds that the evidence was insufficient to establish that he sustained an employment-related condition due to his asbestos exposure.

The Board finds that appellant has not established that he sustained a pulmonary condition causally related to exposure to asbestos in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of his or her claim, including the fact that an injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.[2]

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

[1] 5 U.S.C. §§ 8101-8193.

[2] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying the employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; 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 claimant.[3] The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence.[4] 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,[5] must be one of reasonable medical certainty,[6] 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.[7] The mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two. Neither the fact that the condition became apparent during a period of employment, nor the belief of appellant that the condition was caused by or aggravated by employment conditions is sufficient to establish causal relation.[8]

In this case, appellant has not submitted sufficient evidence to establish that he sustained a pulmonary condition due to his employment-related asbestos exposure. Dr. Rao, a Board-certified internist and appellant's attending physician, diagnosed bilateral interstitial fibrosis due to asbestos exposure based on appellant's work history, physical examination and radiological findings of interstitial lung disease. Dr. Rao further noted that appellant's history revealed "a significant occupational exposure to asbestos dust and adequate latency period as attested to…." However, it appears that Dr. Rao relied upon an inaccurate history of appellant being exposed to asbestos during its removal from a building in 1985 rather than the correct history of exposure to asbestos during its removal from a building in 1998. Medical opinions based on an inaccurate or incomplete history of injury have little probative value.[9]

Moreover, the record contains evidence that appellant does not have an employment-related pulmonary condition. In a report dated February 26, 2002, Dr. Mayo, a Board-certified internist and Office referral physician, found that appellant did not have any condition related to

[3] *Jerry D. Osterman*, 46 ECAB 500 (1995); *see also Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[4] The Board has held that in certain cases, where the causal connection is so obvious, expert medical testimony may be dispensed with to establish a claim; *see Naomi A. Lilly*, 10 ECAB 560, 572-73 (1959). The instant case, however, is not a case of obvious causal connection.

[5] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[6] *See Morris Scanlon*, 11 ECAB 384-85 (1960).

[7] *See William E. Enright*, 31 ECAB 426, 430 (1980).

[8] *Manuel Garcia*, 37 ECAB 767, 773 (1986); *Juanita C. Rogers*, 34 ECAB 544, 546 (1983).

[9] *Vaheh Mokhtarians*, 51 ECAB 190 (1999).

his exposure to asbestos. Dr. Mayo interpreted an x-ray as negative for interstitial fibrosis and noted that appellant's pulmonary function studies were "essentially normal." Dr. Mayo based his opinion on a thorough review of the factual and medical evidence of record, an accurate history of injury and the results of objective testing. He further provided rationale for his opinion by citing the results of objective studies and noting that appellant experienced a "very brief lag time between exposure and reported symptoms." Dr. Mayo's well-rationalized opinion constitutes the weight of the medical evidence and establishes that appellant did not sustain a pulmonary condition causally related to exposure to asbestos in the performance of duty.

The decision of the Office of Workers' Compensation Programs dated May 15, 2002 is affirmed.

Dated, Washington, DC
February 19, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member