United States Department of Labor
Employees' Compensation Appeals Board

MIREYA F. SCHLEICHER (claiming as Executrix of the Estate of WILLIAM FREDERICK SCHLEICHER), Appellant	)	**Docket No. 04-2200**
	)	**Issued: April 14, 2005**
and	)	
DEPARTMENT OF THE ARMY, REGIONAL DIRECTORATE OF PUBLIC WORKS, Fort Dix, NJ, Employer	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
COLLEEN DUFFY KIKO, Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On September 7, 2004 appellant, through her attorney, filed a timely appeal of merit decisions of the Office of Workers' Compensation Programs dated May 28, 2004 and November 20, 2003, which denied the employee's claim that he sustained an injury causally related to factors of his federal employment. Under 20 C.F.R. §§ 501.2(c), 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant established that the employee sustained either a pulmonary or knee condition causally related to factors of his federal employment.

FACTUAL HISTORY

On January 16, 2002 the employee, then a 63-year-old retired telephonic communications installer, filed an occupational disease claim alleging that factors of employment caused bilateral knee conditions and asbestosis and emphysema. He stated that he first became aware of these conditions and their relationship to his employment in 1998. The employee retired in December 2001.

In support of his claim, appellant submitted numerous reports from Dr. Martin L. Levinson, Board-certified in internal medicine and pulmonary disease, dating from December 15, 1998 to April 9, 2002. On April 9, 2002 Dr. Levinson advised that he had treated the employee since December 15, 1998 with symptoms of shortness of breath and diagnosed pulmonary fibrosis caused by the employee's 30-year history of asbestos exposure. He further noted that appellant had never smoked cigarettes, although he smoked cigars and that the employee's chest x-rays and computerized tomography (CT) scans demonstrated fairly extensive pulmonary fibrosis and his pulmonary function tests showed restrictive disease consistent with asbestos exposure. Dr. Levinson stated "he has no reason, other than asbestos exposure, to account for pulmonary fibrosis" and continued "with reasonable medical certainty ... the asbestos exposure accounts for the pulmonary fibrosis," based on appellant's history, physical examination, chest x-rays, CT scans and pulmonary function tests.

The employee also submitted records from a hospital admission in January 1999 when he was treated for diverticulitis, the report of an echocardiogram dated June 15, 2001 that demonstrated trace mitral regurgitation and a normal sinus x-ray dated June 30, 2001. Pulmonary function studies dated December 31, 1998, June 21, 1999, June 27, 2000 and June 21, 2001, administered by Dr. Levinson, demonstrated combined obstructive and restrictive lung disease. Chest x-ray's dated July 27, 2000 and June 30, 2001, revealed interstitial fibrosis and chronic obstructive pulmonary disease. A December 31, 1998 chest CT was read by Dr. Paul Mayer, a Board-certified radiologist, as showing fibrotic changes. He advised that a July 27, 2000 chest CT demonstrated extensive chronic lung disease with emphysema.

In a letter dated August 8, 2002, the Office informed the employee of the type evidence needed to support his claim. It requested that he provide his employment history, including his military service, with particular attention to asbestos exposure and a description of the work conditions that he felt caused his knee condition.

The employing establishment submitted a statement dated November 26, 2002, in which Robert Hurrell, an employing establishment supervisor, stated that he was unaware that the employee was exposed to asbestos while under his supervision.

By decision dated November 27, 2002, the Office denied the claim, noting that the employee had not responded to the August 8, 2002 letter.

On December 10, 2002 the employee, through counsel, requested a hearing and submitted records from Lourdes Medical Center, indicating that he had been hospitalized from October 10 to 25, 2002. An October 15, 2002 chest CT read by Dr. Joseph Della-Peruta, Board-certified in diagnostic radiology, demonstrated a large left-sided pneumothorax and diffuse

severe bilateral interstitial disease. In a discharge summary, Dr. Levinson noted that the employee was admitted for shortness of breath and pneumothorax. His impression was pulmonary fibrosis. A chest tube was inserted during the hospitalization.

The employee died on January 22, 2003. The death certificate lists the cause of death as idiopathic pulmonary fibrosis of six months' duration with pneumothorax listed as a significant condition contributing to his death. On February 3, 2003 appellant, the employee's widow, was named executrix of his estate.

At the hearing, held on September 23, 2003, appellant's attorney argued that the employee's 30-year history of asbestos exposure at work caused his asbestosis and that the physical requirements of his job caused his bilateral knee conditions. He submitted an undated statement in which the employee advised that his military and civilian duties were similar, stating that he was a field crewman in the military and an office repairman and alarm technician during his civilian employment. The job duties required climbing ladders, poles, stairs and crawling under buildings and the employee was often required to stand for long periods while he monitored panels and checked wiring. The employee noted that he had never smoked cigarettes and had been exposed to asbestos and secondary smoke throughout his 37-year working career in the military and as a civilian employee.

Records from Dr. Ronald M. Krasnick, Board-certified in orthopedic surgery, dating from October 13, 1992 to July 11, 2000 were also submitted. Dr. Krasnick chronicled the progression of the employee's bilateral knee conditions. At the employee's first visit on October 13, 1992, Dr. Krasnick reported a history that he had been a lineman in the military and currently worked with computers at the employing establishment. He noted that the employee had had arthroscopic surgery on his right knee three years previously and presented with progressive pain in the left knee. Dr. Krasnick advised that the employee was significantly obese and reported x-ray findings of degenerative changes. In an October 22, 1992 report, he stated that the employee reported that he could not climb stairs and reported magnetic resonance imaging (MRI) scan findings of a posterior horn tear of the medial meniscus. On March 1, 1993 the employee underwent left knee arthroscopy and on January 29, 1996, arthroscopy on the right. On June 5, 1997 the employee underwent bilateral total knee arthroplasties. The pre and postoperative diagnoses were degenerative arthritis of both knees. In a treatment note dated July 11, 2000, the physician advised that the employee was pleased with the outcome of his bilateral total knee replacements, noting that he walked without a limp and was essentially pain free.

In a statement dated October 27, 2003, Steve Whitmore, chief, public works directorate, advised that the employee had no civilian asbestos exposure but had perhaps been exposed to asbestos while in the military. Mr. Whitmore described the employee's work duties from April 1987 until he retired in December 2001, stating that he supervised the employee from April 1987, when he began his civilian employment, to 1992. He noted that the employee had knee problems when he began his civilian employment. Mr. Whitmore advised that the employee was responsible for remotely operating, monitoring and collecting data through a computer console and/or radio control system and that, when performing his duties, the employee sat at a desk in an office setting. He noted that in 1992 the employee was placed in a telecommunication mechanic position, still under Mr. Whitmore's supervision, but that, due to

the employee's knee condition, he was not able to fully perform the duties of this position and a majority of his work consisted of light, clerical office duties. Mr. Whitmore further stated that while the employee was under his supervision there were never any reports of asbestos findings in the office where the employee was assigned to work. The employee continued on light duty and underwent bilateral knee replacement surgery in June 1997. Mr. Whitmore reported that in 1998 the employee came under the supervision of Kathy Shjarbach, who was chief of the maintenance division. Due to the his bilateral knee conditions, he was prevented from being able to fully perform the duties of a telecommunications mechanic and performed the clerical duties of a work order clerk which mainly involved answering the telephone. Mr. Whitmore reported that Ms. Shjarbach advised that the employee was not exposed to asbestos while under her supervision. In 1999 Robert Hurrell, supervisor of the electrical mechanical section, began supervising the employee and Mr. Hurrell reported that the employee was not exposed to asbestos and was assigned to light duties which entailed his working at least 90 percent of the time at a desk in an office setting. Due to his medical need to continue on light duty, the employee was then detailed to a store worker position on June 20, 1999. When returned to his permanent telecommunications mechanic position, he remained on a light-duty assignment, performing office duties until he retired in December 2001. Mr. Whitmore concluded that the employee was never exposed to asbestos while employed at the employing establishment.

By decision dated November 20, 2003, an Office hearing representative affirmed the November 27, 2002 decision.

On March 1, 2004 appellant's attorney requested reconsideration and submitted an October 30, 2003 report from Dr. Krasnick, who advised that, when he initially saw the employee in 1992, he had retired from the military. He stated that the employee had developed progressive pain due to repetitive microtrauma from a very physical job which required kneeling, squatting, crawling and climbing telephone poles on a repetitive basis. Dr. Krasnick described the employee's course of treatment, opining that the employee developed post-traumatic arthrosis on a tricompartmental basis in both knees secondary to "years of hard work as a telephone communication repairman for the military and the government." He concluded that "with reasonable medical certainly his job description significantly aggravated and exacerbated his arthritic symptoms" which led to the need for joint replacement surgery.

In a decision dated May 28, 2004, the Office denied modification of the November 20, 2003 decision, finding that Dr. Krasnick based his opinion on an incorrect job description.

LEGAL PRECEDENT

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 the individual is an employee of the United States within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and specific condition for which compensation is claimed is causally related to the employment injury. Regardless of whether the

[1] 5 U.S.C. §§ 8101-8193.

asserted claim involves traumatic injury or occupational disease, an employee must satisfy this burden of proof.[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 presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying 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 diagnosed condition is causally related to the employment factors identified by the claimant. The medical opinion must be one of reasonable medical certainty 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.[3]

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.[4] Rationalized medical evidence is medical evidence which includes a physician's rationalized medical 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, must be one of reasonable medical certainty 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.[5] Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[6]

ANALYSIS

The employee in this case filed an occupational disease claim on January 16, 2002 alleging that factors of his federal employment caused bilateral knee conditions, asbestosis and emphysema. The Board finds that appellant has not met her burden of proof to establish that these conditions were employment related.

Regarding the employee's lung condition, appellant has not submitted sufficient medical evidence to indicate that this condition was causally related to factors of employment. While it is clear from the medical record that the employee contracted pulmonary fibrosis and his attending pulmonologist, Dr. Levinson, advised that this was caused by a 30-year history of asbestos exposure at work, the employing establishment denied that appellant was ever exposed to asbestos during his civilian employment. It indicated, however that he perhaps was exposed

[2] *Gary J. Watling*, 52 ECAB 357 (2001).

[3] *Solomon Polen*, 51 ECAB 341 (2000).

[4] *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[5] *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

[6] *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

during his service in the military. Neither the employee nor appellant submitted sufficient evidence to establish that the employee was exposed to asbestos during his civilian employment. To be of probative value, medical evidence must be in the form of a reasoned opinion by a qualified physician and based upon a complete and accurate factual and medical history.[7] Dr. Levinson did not appear to be aware of the facts regarding the employee's employment history and lack of exposure to asbestos during his civilian employment. Medical evidence predicated on inaccurate factual or medical history is of diminished probative value.[8] Appellant, therefore, failed to meet her burden of proof to establish that the employee's lung condition was causally related to factors of his civilian federal employment.

Regarding the employee's bilateral knee condition, he alleged that this was caused by his duties of climbing ladders and stairs and crawling under buildings. Mr. Whitmore, chief of the public works directorate, however, provided a history in which he described the employee's various job duties, stating that he supervised him from April 1987, when he began his civilian employment, to 1992. He noted that the employee had knee problems when he began his civilian employment. Mr. Whitmore advised that the employee was responsible for remotely operating, monitoring and collecting data through a computer console and/or radio control system and that, when performing his duties he sat at a desk in an office setting. He noted that in 1992 the employee was placed in a telecommunication mechanic position, still under Mr. Whitmore's supervision, but that, due to the employee's knee condition, the was not able to fully perform the duties of this position and the majority of his work consisted of light, clerical office duties. Mr. Whitmore stated that the employee continued on light duty, noting that he underwent the bilateral knee replacement surgery in June 1997 and reported that in 1998 the employee came under the supervision of Ms. Shjarbach, who was chief of the maintenance division and that, due to the employee's bilateral knee conditions, he was prevented from being able to fully perform the duties of a telecommunications mechanic and performed the clerical duties of a work order clerk which mainly involved answering the telephone. He stated that in 1999 Robert Hurrell, supervisor of the electrical mechanical section, began supervising the employee and that he reported that the employee was assigned to light duties which entailed his working at least 90 percent of the time at a desk in an office setting and that, due to his medical need to continue on light duty, the employee was then detailed to a store worker position on June 20, 1999 and when returned to his permanent telecommunications mechanic position, he remained on a light-duty assignment, performing office duties until he retired in December 2001.

To be of probative value, medical evidence must be in the form of a reasoned opinion by a qualified physician and based upon a complete and accurate factual and medical history.[9] Dr. Krasnick, the employee's attending orthopedic surgeon, advised that his bilateral knee conditions gradually worsened due to the "very physical" job which required kneeling, squatting, crawling and climbing telephone poles on a repetitive basis during "years of hard work as a telephone communication repairman for the military and the government." There is, however, insufficient evidence to substantiate appellant's assertion that his civilian employment entailed

[7] *Carol S. Madsen*, 54 ECAB ____ (Docket No. 02-1667, issued January 8, 2003).

[8] *Albert C. Brown*, 52 ECAB 152 (2000).

[9] *Carol S. Madsen*, *supra* note 8.

the "very physical" requirements noted by Dr. Krasnick as causing appellant's bilateral knee condition. Rather, his civilian employment consisted primarily of light and sedentary duties. Thus, it does not appear that Dr. Krasnick was aware of the facts regarding the employee's civilian employment history and lack of heavy physical duties during his civilian employment. Medical evidence predicated on inaccurate factual or medical history is of diminished probative value.[10] Appellant, therefore, failed to meet her burden of proof to establish that the employee's bilateral knee conditions were causally related to factors of his civilian federal employment.

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish that the employee's lung and knee conditions were causally related to factors of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated May 28, 2004 and November 20, 2003 be affirmed.

Issued: April 14, 2005
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

[10] *Albert C. Brown, supra* note 8.