

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HUGH KELLEY and TENNESSEE VALLEY AUTHORITY,
BROWNS FERRY NUCLEAR PLANT, Decatur, Ala.

*Docket No. 97-2752; Submitted on the Record;
Issued March 19, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant established that his cancer of the lymph nodes is causally related to his federal employment.

On February 8, 1997 appellant, then a 51-year-old machinist/welder, filed a notice of occupational disease and claim for compensation alleging that his cancer of the lymph nodes was employment related. Appellant indicated that he became aware of his disease or illness on January 31, 1979 because his immunity and blood count lowered, and he became sterile. He further indicated that he attempted to apply for compensation previously, but received no help. Appellant did not stop working.

In a statement received February 28, 1997, appellant indicated he became aware of his disease in 1981. He stated he had weak spells and spit blood. Appellant noted asbestos exposure related to his previous employment. He indicated that he received an overdose of radiation while working for the employing establishment. Appellant stated that he was diagnosed with throat cancer and asbestosis. He reported that he became sterile and had an abnormal blood count due to the radiation overdose. Appellant indicated that he was disabled due to the asbestosis and radiation exposure. He also reported an unrelated back injury.

In a statement received March 7, 1997, appellant explained that he received his radiation exposure while fixing a cracked pipe where the radiation was drained out.

Appellant then submitted employment and medical records unrelated to his alleged condition and disability.

On January 27, 1997 the employing establishment indicated that it monitored appellant for radiation exposure from September 1, 1978 through January 31, 1979 and that his total whole body exposure was 3,026 millirems.

In a letter dated May 16, 1997, the Office of Workers' Compensation Programs accepted as factual that appellant was exposed to 3,026 millirems of ionizing radiation while he worked at the employing establishment from September 1, 1978 through January 31, 1979. The Office stated that the evidence was insufficient to establish that the claim was filed within the three-year time limitation of the Federal Employees' Compensation Act and requested additional information. The Office also requested a comprehensive medical report addressing the cause of appellant's alleged condition. Specifically, the Office requested that "if your doctor feels that radiation exposure in your [f]ederal employment contributed to your condition, an explanation of how such exposure contributed should be provided, and must state the doctor's reasons for this opinion." Appellant was given 30 days to respond.

A report was subsequently provided by the Radiation Effects Advisory Group, an organization operated by the employing establishment. The report reviewed a primary dosimetry data report and a personnel contamination report documenting appellant's radiation exposure. It also reviewed a form dated September 18, 1978 indicating that appellant had not been previously exposed to radiation in his prior employment and a work permit demonstrating radioactive risks in the work area. The report included a September 13, 1978 medical examination record which did not address the claimed condition and a probability study indicating that there was a 3 percent chance his thyroid cancer resulted from his accepted radiation exposure, but a 97 percent chance the radiation exposure did not cause the cancer. In addition, the report contained articles on thyroid cancer from the National Cancer Institute and Oncolink. The articles did not address appellant's specific condition and its cause. The Radiation Effects Advisory Group concluded that appellant's "very low radiation exposure levels make the connection between his occupational exposure and his stated sterility and thyroid carcinoma extremely remote, and very likely non-existent." The report was not signed by a physician.

In a letter decision dated July 16, 1997, the Office denied appellant's claim because the medical evidence was insufficient to establish that his condition was caused by an employment factor. The Office indicated that appellant was advised of the deficiency of the claim, but that he failed to submit supporting evidence.

The Board finds that appellant failed to establish that his cancer of the lymph nodes was causally related to his employment.

An employee seeking benefits under the Act ¹ has the burden of establishing that 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/or specific condition for which compensation is claimed are causally related to the employment injury.² These are the essential elements of each

¹ 5 U.S.C. §§ 8101-8193.

² *Joe Cameron*, 42 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

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 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 the claimant. The medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on this issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factor. 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.⁴

In the instant case, it is not disputed that appellant has cancer and that he had workplace exposure to radiation which allegedly caused the disease. Appellant, however, has submitted no medical evidence establishing that the diagnosed condition is causally related to the employment factors or conditions. The Office specifically requested this medical evidence in its May 16, 1997 letter, but appellant failed to respond. An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that her condition was caused, precipitated or aggravated by her employment is sufficient to establish causal relationship.⁵ Causal relationship must be established by rationalized medical opinion evidence. Inasmuch as appellant did not submit such evidence, the Office properly denied appellant's claim for compensation.

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁴ *Id.*

⁵ *Id.*

The decision of the Office of Workers' Compensation Programs dated July 16, 1997 is affirmed.

Dated, Washington, D.C.
March 19, 1998

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member