

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HILDA ENGEL, claiming as widow of DANIEL E. ENGEL and
DEPARTMENT OF THE NAVY, NAVAL AIR STATION, Alameda, CA

*Docket No. 03-339; Submitted on the Record;
Issued January 29, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether the employee's death on March 5, 1999 was causally related to his federal employment.

On December 6, 1978 the employee filed a notice of occupational disease and claim for compensation (Form CA-2), alleging that he had sustained a pulmonary condition causally related to asbestos exposure during his federal employment. The employee retired from federal employment in April 1979. The Office of Workers' Compensation Programs accepted the claim for asbestosis, bilateral pleural thickening and pleural plaques. The record indicates that the employee died on March 5, 1999, at the age of 76.

On April 14, 1999 appellant filed a claim for compensation by widow, widower and/or children (Form CA-5). By decision dated July 2, 1999, the Office denied the claim on the grounds that the medical evidence did not establish that the employee's death was causally related to his federal employment. In a decision dated November 4, 1999, the Office denied modification of the July 2, 1999 decision.

The Board finds that appellant has not established that the employee's death on March 5, 1999 was causally related to his federal employment.

An 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 complete factual and medical background.¹ The opinion of the physician must be one of reasonable medical certainty and must be supported by medical rationale.² The

¹ *Carolyn P. Spiewak (Paul Spiewak)*, 40 ECAB 552 (1989).

² *Kathy Marshall (Dennis Marshall)*, 45 ECAB 827 (1994).

mere showing that an employee was receiving compensation for total disability at the time of his death does not establish that his death was causally related to his employment.³

The death certificate completed by Dr. W.C. Javorski, an internist, on March 8, 1999 indicated that the immediate cause of death was cardiopulmonary arrest and atherosclerosis. The other significant conditions contributing to death were reported as multi-infarct dementia, hypertension and Type II diabetes. On the reverse of the CA-5 form, Dr. Javorski opined that “asbestos was significant contributor to patient’s death (the most significant contributing factor).” Dr. Javorski did not provide further explanation.

The Office referred medical records and a statement of accepted facts to Dr. Charles C. McDonald, a pulmonary specialist. In a report dated June 21, 1999, Dr. McDonald provided a history and discussed the medical evidence of record. He noted that multiple evaluations showed that the employee had minor pleural plaques, with physical examinations of the lungs consistently normal, as were pulmonary function tests. Dr. McDonald concluded that the employee’s death was unrelated to factors of his federal employment.

Appellant submitted a death certificate amendment dated July 2, 1999 from Dr. Javorski, who indicated that, instead of atherosclerosis, the second immediate cause of death should have been reported as asbestosis for 21 years. Dr. Javorski did not, however, submit a narrative medical report providing a history and a reasoned medical opinion with respect to causal relationship between the employee’s death and his federal employment. He stated on the CA-5 claim form that he believed asbestosis was a significant contributing factor, without providing a factual and medical background and a clear explanation as to how the employment-related condition contributed to the employee’s death. On the other hand, Dr. McDonald did provide a reasoned opinion, based on an accurate background, that the death was not causally related to federal employment. The Board finds that the weight of the probative medical evidence on the issue rested with Dr. McDonald, and the Office properly denied the claim for death benefits in this case.

The Board further notes that, after appellant filed her appeal on November 2, 2000, the Office’s Branch of Hearings and Review issued a decision dated August 3, 2001 with respect to a request for a hearing. It is well established that the Board and the Office may not have concurrent jurisdiction over the same case, and those Office decisions which change the status of the decision on appeal are null and void.⁴ The August 3, 2001 decision is therefore null and void.

³ *Edna M. Davis (Kenneth L. Davis)*, 42 ECAB 728 (1991).

⁴ *Douglas E. Billings*, 41 ECAB 880, 895 (1990).

The decision of the Office of Workers' Compensation Programs dated November 4, 1999 is affirmed.

Dated, Washington, DC
January 29, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member