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ALBERTO LICHTENBERGER, Appellant)	
)	
and)	Docket No. 04-111
)	Issued: March 18, 2004
DEPARTMENT OF THE ARMY, CORPUS)	
CHRISTI ARMY DEPOT, Corpus Christi, TX,)	
Employer)	
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Case Submitted on the Record

Before:
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member

On October 20, 2003 appellant filed a timely appeal from Office of Workers' Compensation Programs' decisions dated February 6 and June 11, 2003 denying his claim for asbestosis and silicosis. Pursuant to 20 C.F.R. §§ 10.501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

The issue is whether appellant sustained asbestosis or silicosis in the performance of duty causally related to factors of his federal employment.

FACTUAL HISTORY

On October 2, 2002 appellant, then a 59-year-old aircraft engine examiner, filed an occupational disease claim alleging that he sustained asbestosis and silicosis¹ due to exposure to asbestos fibers and silica dust at work. Appellant indicated that during the latter part of the 1970s he worked in the engine cleaning shop sandblasting engine parts and that he continued to work near the engine cleaning shop. He indicated that he first became aware of his condition on June 20, 2002.

By letter dated November 12, 2002, the Office advised appellant that he needed to submit additional evidence in support of his claim, including a description of his exposure to hazardous materials and a rationalized medical opinion explaining how his condition was causally related to factors of his federal employment.

On December 6, 2002 Vickie Garcia, an employing establishment compensation specialist, stated that appellant never worked on any parts or materials containing asbestos and that the air quality readings in all the areas in which he had worked were well below the permissible exposure levels (PEL) set by the Occupational Safety and Health Administration (OSHA). The employing establishment provided a work history showing that appellant had been employed since July 15, 1968 and had worked only in the engine production work areas in Building 8. Appellant worked as an aircraft engine mechanic, aircraft engine overhaul inspector and an aircraft examiner (aircraft engine mechanic) in engines assembly, engines disassembly and pre-shop analysis (PSA) in work areas 34, 43 and 279. The employing establishment stated that the average reading of the air sampling in areas 34 and 279 was .006 asbestos fibers per cubic centimeter of air and .002 in area 43 and that these readings were below the OSHA PEL of 0.1.

By decision dated February 6, 2002, the Office denied appellant's claim on the grounds that the evidence of record failed to establish that he was exposed to hazardous materials at work, as alleged.

Appellant requested reconsideration and submitted additional evidence.

In a memorandum dated April 17, 2002, the commanding officer of the employing establishment stated:

"1. In accordance with 29 Code of Federal Regulation[s] (CFR) 1926.1101, I want to notify you of the probable presence of asbestos-containing material (ACM) in the buildings on Station. Most of the buildings on the Station were built at a time when asbestos was a common building material.... Common uses

¹ Asbestosis is pneumoconiosis (any lung disease characterized by permanent deposition of substantial amounts of particulate matter, usually of occupational or environmental origin) caused by inhaling asbestos fibers, marked by interstitial fibrosis and associated with pleural mesothelioma and bronchogenic carcinoma. Silicosis is pneumoconiosis due to inhalation of the dust of stone, sand or flint containing silicon dioxide, with formation of generalized nodular fibrotic changes in both lungs. *DORLAND'S ILLUSTRATED Dictionary* at 153, 1318, 1527 (27th ed. 1988).

of asbestos are in ceiling texture, ceiling panels, floor tile and mastic, roofing materials, insulation, wall board, and siding.

“2. ACM is found in two major forms: (1) friable, which is material that when dry can be crumbled, pulverized, or reduced to powder by hand pressure; and (2) nonfriable, which is material that is matrix-bonded and not likely to release fibers upon casual contact. While most of the friable asbestos on base has been removed, nonfriable asbestos still exists throughout the base and is managed in place....

“3. ACM found in buildings does not normally present a hazard to occupants unless it is in such a deteriorating condition that the asbestos becomes friable. The [employing establishment] manages the ACM in place, or removes it.”

A June 14, 2002 chest x-ray of appellant was interpreted by Dr. Richard B. Levine, a Board-certified radiologist, as revealing definite bilateral irregular and rounded interstitial markings diagnostic of interstitial fibrosis. He indicated that appellant had “interstitial fibrosis typical of mixed dust disease due to previous occupational exposure to both asbestos and silica dust diagnostic of asbestosis and silicosis.”

In a November 17, 2002 report,² Dr. Harvey M. Richey, III, a Board-certified internist and a specialist in pulmonary disease, provided findings on examination and the results of pulmonary function studies and a chest x-ray. He diagnosed mixed dust pneumoconiosis based on “occupational history, latent period and radiographic findings.”

By decision dated June 11, 2003, the Office denied modification of its February 6, 2003 decision on the grounds that the evidence of record failed to establish that appellant’s exposure to asbestos at work was sufficient to have caused or contributed to his conditions.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees’ Compensation Act³ has the burden to establish the essential elements of his claim. When an employee claims that he sustained an injury in the performance of duty, he must submit evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He must also establish that such event, incident or exposure caused an injury.⁴

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

² Page one of this report is missing.

³ 5 U.S.C. §§ 8101-8193.

⁴ *Joseph W. Kripp*, 55 ECAB ____ (Docket No. 03-1814, issued October 3, 2003); *Walter D. Morehead*, 31 ECAB 188 (1979) (occupational disease or illness).

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.⁵

The medical evidence required to establish a causal relationship is rationalized medical opinion evidence.⁶ 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, 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.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 claimant's belief that the condition was caused or aggravated by employment conditions is sufficient to establish causal relationship.⁸

ANALYSIS

In this case, the employing establishment provided evidence that showed appellant had some exposure to asbestos but asserted that the air sampling tests revealed levels which were below the OSHA PEL. The levels of asbestos provided by the employing establishment air sampling tests do not meet the level of two fibers per cubic centimeter of air at which the Office's procedure manual provides for acceptance that asbestos-related disease may result from such occupational exposure.⁹ However, it is unclear whether an individual can develop pneumoconiosis at the lower asbestos exposure levels in appellant's workplace. Furthermore, the employing establishment apparently did not provide data as to whether silica dust was present in any of the areas where appellant worked. The Board finds that the reports of Drs. Richey and Levine constitute sufficient evidence in support of appellant's claim to require further development by the Office. The physicians diagnosed pneumoconiosis and opined that

⁵ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁶ The Board has held that in certain cases, where the causal connection is obvious, expert medical testimony may not be necessary to establish a claim. See *Naomi A. Lilly*, 10 ECAB 560 (1959). The instant case, however, is not a case of obvious causal connection.

⁷ *Gary L. Fowler*, 45 ECAB 365 (1994); *James D. Carter, Jr.*, 43 ECAB 113 (1991); *Victor J. Woodhams*, *supra* note 5.

⁸ *Robert A. Boyle*, 54 ECAB ____ (Docket No. 02-2177, issued January 27, 2003); *Donna L. Mims*, 53 ECAB ____ (Docket No. 01-1835, issued August 13, 2002); *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

⁹ The Office's procedure manual provides that, "It is accepted that asbestos-related disease may result from occupational exposure in excess of two fibers/cc [cubic centimeters of air] (moderate or heavy) during the course of federal employment, or the presence of asbestos dust on work surfaces, even if invisible." Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.8.b (September 1994).

the condition was caused by exposure to dust containing silica and asbestos at the employing establishment. While these reports lack detailed medical rationale sufficient to discharge appellant's burden of proof to establish that his pneumoconiosis was caused or aggravated by his exposure to asbestos and silica dust at work, this merely means that their probative value is diminished.¹⁰ It is well established that proceedings under the Act are not adversarial in nature, and, while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.¹¹ The Office has an obligation to see that justice is done.¹² The Board finds that further development of the factual and medical evidence is required in this case.

CONCLUSION

On remand, the Office should prepare a statement of accepted facts (which will include detailed data on appellant's exposure to asbestos fibers and silica dust in his various work areas during his employment) and refer appellant, together with the complete case record and questions to be answered, to a pulmonary specialist for a complete evaluation and a detailed opinion as to whether there is causal relationship between appellant's pneumoconiosis and his exposure to asbestos and silica dust at the employing establishment. The specialist should be requested to perform a complete pulmonary evaluation, including x-rays and pulmonary function studies. After such further development as the Office deems necessary, a *de novo* decision shall be issued.

¹⁰ *Allen C. Hundley*, 53 ECAB ____ (Docket No. 02-107, issued January 27, 2003).

¹¹ *Allen C. Hundley*, *supra* note 10; *Udella Billups*, 41 ECAB 260 (1989); *Dorothy Sidwell*, 36 ECAB 699 (1985).

¹² *John J. Carlone*, 41 ECAB 354 (1989).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated June 11 and February 6, 2003 are set aside and the case is remanded for further development consistent with this decision.

Issued: March 18, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member