



## **FACTUAL HISTORY**

On November 18, 2003 appellant, then a 60-year-old former boilermaker, filed an occupational disease claim alleging that he had respiratory asbestosis and vision and hearing impairments due to exposure to asbestos materials during 26 years of work with the employing establishment. He first became aware of his condition on March 27, 1981 and first became aware of its causal relationship to his employment on November 18, 2003. Appellant indicated that he was last exposed to conditions which he alleged to have caused the disease or illness on March 26, 1981. He retired on April 24, 1992.<sup>2</sup>

By decision dated July 19, 2004, appellant's claim was denied by the Office as untimely filed, finding that his date of injury was March 27, 1981, that he did not file a claim until November 18, 2003 and that he should have been aware of an employment relationship by April 1992. Additionally, the Office found that appellant's immediate supervisor did not have actual knowledge of injury within 30 days of the injury.

Appellant requested a review of the written record and in a decision dated December 10, 2004, an Office hearing representative reversed this decision and found that the claim was timely filed as the employing establishment had conducted medical examinations and had actual knowledge of appellant's asbestosis. The hearing representative advised appellant to submit a separate CA-2 form for the claim for compensation in connection with the vision impairment and a separate claim for hearing impairment.

In a decision dated May 19, 2005, the Office denied appellant's claim for compensation for the reason that, as he did not resign until April 24, 1992, he was not entitled to benefits under the Act. The Office explained that Philippine nationals who sustained occupational disease due to work exposure of which at least a portion occurred on or after September 10, 1982 and who are eligible for Philippine benefits are not entitled to benefits under the Act. The Office found that appellant was not a federal employee for purposes of coverage under the Act.

## **LEGAL PRECEDENT**

On March 10, 1982 the United States entered into an agreement with the Republic of the Philippines.<sup>3</sup> Effective that date, this Agreement transferred coverage for employment injuries sustained by Philippine nationals employed by the United States from the Act to the Philippine Medical Care Program and the Philippine Employees' Compensation Program.

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<sup>2</sup> Appellant worked for the employing establishment from January 5, 1966 to November 16, 1968 as a helper boilermaker, from November 17, 1968 to August 3, 1974 as a boilermaker intermediate and from August 4, 1974 until April 24, 1992 as a boilermaker.

<sup>3</sup> Agreement on Employees' Compensation and Medical Care Programs, March 10, 1982, United States-Philippines, 34 U.S.T. 312, T.I.A.S. No. 10358 (hereinafter the 1982 Agreement or the Agreement). *See Gregorio Llagas*, 37 ECAB 116, 117 (1985).

The Office's procedure manual further provides:

“*Under an agreement* between the United States and the Republic of the Philippines signed on March 10, 1982 the Philippine Medical Care Program and the Employees' Compensation Program were extended to all Philippine national direct hire employees of the U.S. Military Forces, except for those employees who are not members of the Philippine Social Security System.

“(1) *Philippine nationals who sustain traumatic injury* on or after March 10, 1982 and are eligible for benefits under the Philippine systems are not entitled to [the] Act benefits.

“(2) *Philippine nationals who sustain occupational disease* due to work exposure of which at least a portion occurred on or after September 10, 1982 and who are eligible for Philippine benefits, are not entitled to [the Act] benefits.

“(3) *Whenever a claim* from a Philippine national who is covered under the local system is received for injury or occupational disease sustained outside the time frames specified above, the claim should be denied with compensation order and full appeal rights, on the basis that the claimant is not a civil employee of the United States for purposes of compensation coverage under the [Act].”<sup>4</sup> (Emphasis in the original.)

The Board has consistently held that the date of injury in occupational disease claims, where exposure continues over a period of time, is the date of the employee's last exposure to the employment factors which are implicated in causing the disease.<sup>5</sup> The Board has affirmed this doctrine in connection with other cases involving the 1982 Agreement.<sup>6</sup>

### ANALYSIS

In this case, appellant attributed his asbestosis to factors of his federal employment from 1966 to 1992. The record indicates that appellant was employed by the employing establishment as a boilermaker from 1966 to 1992. The Office's procedure manual provides that “Philippine nationals who sustain occupational disease due to work exposure of which at least a portion occurred on or after September 10, 1982 and who are eligible for Philippine benefits, are not entitled to [the Act] benefits.”<sup>7</sup> Although appellant contends that he knew that he had asbestosis on March 27, 1981, the record indicates that at least a portion of his work exposure to asbestos occurred after September 10, 1982. Accordingly, for purposes of applying the 1982 Agreement, appellant's injury occurred after the September 10, 1982 effective date of the Agreement. By the

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<sup>4</sup> Federal (FECA) Procedure Manual, Part -- Special Case Procedures, *Philippine Nationals*, Chapter 4.801.10(a). See also *Jose Lozano*, 56 ECAB \_\_\_\_ (Docket No. 05-1146, issued August 18, 2005).

<sup>5</sup> *Rustico F. Rimando*, 37 ECAB 745 (1986).

<sup>6</sup> *Greogio Llagas*, *supra* note 3.

<sup>7</sup> *Id.*

terms of the 1982 Agreement, his claim is cognizable under the Philippines Employees' Compensation Program, rather than under the Act. Consequently, the Office's denial of this claim under the Act was proper. The Board finds that appellant is not a civil employee under the Act for purposes of coverage under the Act.

**CONCLUSION**

The Board finds that appellant is not a civil employee of the United States for purposes of coverage under the Act.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated May 19, 2005 is affirmed.

Issued: December 7, 2005  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board