

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MENTIE HAZELETT, claiming as widow of EUGENE HAZELETT and
DEPARTMENT OF THE NAVY, MARINE CORPS LOGISTICS BASE,
Barstow, Calif.

*Docket No. 96-708; Submitted on the Record;
Issued September 1, 1998*

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether the employee's death on December 29, 1991 was causally related to chemical exposure accepted to have occurred in the course of his federal employment.

On July 13, 1981 the employee, then a 33-year-old pipefitter in a wastewater treatment plant, filed a claim for compensation benefits (Form CA-2) alleging that he developed a skin condition due to exposure to various chemicals. On June 18, 1982 after a period of factual and medical development, the Office of Workers' Compensation Programs accepted the employee's claim for aggravation of eczema of the hands and precipitation of contact dermatitis.¹ The employee retired in March 1982.

The employee passed away on December 29, 1991, while he was still in receipt of compensation benefits. The death certificate reported the cause of death as metastatic adenocarcinoma of the rectum. Appellant, the employees' widow, filed a claim for survivor's benefits alleging that the employee's death from cancer was causally related to his accepted chemical exposure. On the reverse side of the claim form Dr. Larry Sutterby, a Board-certified internist, stated that "the absence of genetic predisposing factors, makes drug teratogenicity a possible etiological factor. Dr. Sutterby also submitted a narrative report dated June 15, 1992, in which he noted that because the employee had no family history of colon cancer and was known to have been exposed to numerous chemicals, "one would have to be suspicious that one of these chemical exposures was a factor in his development of colon cancer at such a young age."

¹ The Office further accepted that during the course of his federal employment, appellant was exposed to potassium sulfate, sodium arsenite, mercuric sulfate, potassium dichromate, sulfuric acid-silver sulfate, ferrous ammonia sulfate, methylene blue, potassium hydroxide, ammonium phosphate, potassium chloride, freon 113, ammonium hydroxide, chloroform and sulfuric acid.

In support of her claim, appellant submitted a November 25, 1992 medical report from Dr. Nachman Brautbar, a Board-certified internist, who noted that the employee had an absence of factors normally associated with the development of carcinoma of the rectum and colon, such as a family history of the disease or the presence of underlying diseases such as ulcerative colitis or ulcerative proctitis, and that some of the substances to which the employee was exposed are known carcinogens. Dr. Brautbar concluded that based on the employee's medical history and his documented chemical exposure, his death was industrially related.

On November 17, 1994 after a period of medical and factual development which included obtaining two separate second opinion reports, one dated April 5, 1994 from Dr. Sarah Jewell and Dr. John R. Balmes, and a September 1, 1994 report from Dr. Edwin M. Shonfeld, each Board-certified internists, the Office issued a decision denying appellant's claim for benefits on the grounds that the medical evidence of record is insufficient to establish that the employee's fatal carcinoma was causally related to the employee's accepted conditions.

Appellant's December 17, 1994 request for reconsideration was denied in a merit decision issued by the Office on January 3, 1995.

By letter dated April 13, 1995, appellant requested reconsideration of the Office's prior decision, and submitted in support of her request a supplemental report dated April 4, 1995 from Dr. Brautbar, in which the physician reiterated his opinion that the employee's death was causally related to chemical exposure in his federal employment.

In a merit decision dated April 25, 1995, the Office determined that the newly submitted evidence was of insufficient probative value to warrant modification of the Office's prior decision.

On June 21, 1995 appellant again requested reconsideration of the Office's denial of benefits. In support of her request, appellant submitted a second supplemental report from Dr. Brautbar dated June 6, 1995, in which the physician provided additional explanation and medical rationale for his opinion that the employee's death was industrially related.

By letter dated August 21, 1995, the Office forwarded a statement of accepted facts and the entire case file to Dr. Linda G. Garb, a physician Board-certified in preventive and occupational medicine as an impartial medical examiner, in order to resolve the conflict in medical opinion between Drs. Brautbar, Jewell, Balmes and Shonfeld, the Office second opinion referral physicians, as to whether the employee's death was causally related to his federal employment. The Office specifically asked Dr. Garb to determine the exact cause of death, and to provide her rationalized opinion as to whether the diagnosed condition was medically connected to any of the accepted factors of employment either by direct cause, aggravation, precipitation or acceleration.

In a report dated September 14, 1995, Dr. Garb opined that in all medical probability, the employee's death from colorectal cancer was not causally related to factors of his federal employment.

In a decision dated October 3, 1995, the Office declined to modify its prior decision denying appellant's claim for survivor benefits, finding that the weight of the medical evidence, represented by the well-reasoned opinion of Dr. Garb, the impartial medical specialist, established that the employee's death was not causally related to his accepted conditions.

The Board finds that appellant did not meet her burden of proof to establish that the employee's death was causally related to his accepted employment-related chemical exposure.

Section 8123(a) of the Federal Employees' Compensation Act provides that "[i]f there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."² The opinion of the physician selected by the Office, called an impartial medical examiner or independent medical specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.³ In this case, the Office found a conflict in medical opinion to exist between appellant's physician, Drs. Brautbar, Jewell, Balmes and Shonfeld, the Office second opinion physicians.

To resolve the conflict in the medical opinion the Office referred this claim to Dr. Garb, the impartial medical specialist. In a detailed and rationalized report dated September 14, 1995, Dr. Garb reviewed all of the medical and factual evidence of record and the relevant toxicological literature pertaining to chemical carcinogenesis, including that referred to by appellant's physician, Dr. Brautbar. Dr. Garb noted that while four of the chemicals to which the employee was exposed are classified by the International Association for Research on Cancer as carcinogens, and three of these four are considered to cause cancer in humans under certain circumstances, there is no evidence that any of these chemicals are linked to the development of colorectal cancer in humans. Therefore, Dr. Garb concluded that in all medical probability, the employee's death from colorectal cancer was not causally related to his former Federal employment either by direct cause, aggravation, precipitation or acceleration.

The Board finds that Dr. Garb's opinion is based on a complete and accurate factual background and is sufficiently well rationalized to be accorded special weight. Therefore, Dr. Garb's opinion constitutes the weight of the medical evidence and establishes that appellant's death was not causally related to factors of his federal employment.

² 5 U.S.C. § 8123(a).

³ *Gary R. Sieber*, 46 ECAB 215 (1994).

The decisions of the Office of Workers' Compensation Programs dated October 3 and April 25, 1995 are affirmed.

Dated, Washington, D.C.
September 1, 1998

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member