

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MARY EVANS, claiming as widow of ROBERT EVANS and DEPARTMENT OF THE NAVY, LONG BEACH NAVAL SHIPYARD, Long Beach, Calif.

*Docket No. 97-2270; Submitted on the Record;  
Issued June 9, 1999*

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DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,  
A. PETER KANJORSKI

The issue is whether the employee's death on October 27, 1994 was causally related to his federal employment.

In the present case, the employee had filed a claim on May 31, 1985 alleging that exposure to asbestos during his federal employment from 1944 to 1947 had contributed to a lung condition.<sup>1</sup> The Office of Workers' Compensation Programs accepted the claim for bronchitis and pleural thickening, based on the reports of Dr. Kathy Sietsma, a Board-certified pulmonary specialist serving as an impartial medical specialist.<sup>2</sup> The employee received compensation from May 1977 until his death on October 27, 1994. The death certificate indicated the immediate cause of death was carcinomatosis due to adenocarcinoma of the prostate, with major cerebrovascular accident has another significant condition contributing to death.

On October 10, 1995 appellant filed a claim for compensation by widow (Form CA-5). By decision dated March 27, 1996, the Office determined that appellant had failed to establish that the employee's death was causally related to his federal employment. Appellant requested reconsideration, and the Office found that a conflict in the medical evidence existed. Following further development of the evidence, the Office denied modification by decision dated March 13, 1997.

The Board has reviewed the record and finds that appellant has not established that the employee's death was causally related to his federal employment.

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<sup>1</sup> The record indicates that appellant worked as a rigger for the employing establishment from 1944 to 1947; he worked until 1977 in private employment.

<sup>2</sup> The history of the employee's claim includes two prior Board decisions. Docket No. 86-972, issued June 12, 1986, remanded the case for further development on the issue of whether the claim was timely filed. Docket No. 88-329, issued March 14, 1988, found a conflict in the medial evidence as to whether the employee established a pulmonary condition 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.<sup>3</sup> The opinion of the physician must be one of reasonable medical certainty and must be supported by medical rationale.<sup>4</sup> The 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.<sup>5</sup>

In this case, the Office properly found a conflict in the medical evidence under 5 U.S.C. § 8123(a).<sup>6</sup> An Office medical consultant, Dr. Charles C. McDonald, had opined in a March 8, 1996 report that there was no evidence that an employment-related condition had contributed to the employee's death. An attending physician, Dr. Robert Lugliani, a pulmonary specialist, had opined in a December 16, 1996 report that the employee's employment-related condition had developed into lung cancer, which spread to the brain and contributed to his death. When there are opposing medical reports of virtually equal weight and rationale, the case must be referred to an impartial specialist, pursuant to section 8123(a), to resolve the conflict in the medical evidence.<sup>7</sup>

The Office referred medical records and a statement of accepted facts to Dr. W.G. Hughson, a Board-certified internist specializing in pulmonary diseases. In a report dated March 1, 1997, Dr. Hughson reviewed medical records, noting that appellant had a history of prostate cancer and had suffered a stroke sometime prior to his death. Dr. Hughson stated that there was no evidence that the prostate cancer was causally related to appellant's federal employment, and if there was a brain tumor contributing to a CVA which hastened the employee's death, there was no evidence that the brain tumor was causally related to federal employment. Dr. Hughson further explained:

"I think that Dr. Lugliani's opinion concerning the presence of lung cancer is speculative, and I fail to see how he can express his opinions in terms of reasonable medical certainty. There is a widely accepted clinical philosophy, often referred to as Ocam's razor, that a single diagnosis which explains all the findings is more likely to be correct than multiple, separate diagnoses each of which explains only some of the findings. In this case, wide-spread late-stage prostate cancer (which was presumably established by surgical resection and pathological review) can easily explain all of the findings, including disease in the thorax and brain. In any case, even if Dr. Lugliani is correct about the lung cancer, there is no evidence that [the employee] had asbestosis. In my opinion,

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<sup>3</sup> *Carolyn P. Spiewak (Paul Spiewak)*, 40 ECAB 552 (1989).

<sup>4</sup> *Kathy Marshall (Dennis Marshal)*, 45 ECAB 827 (1994).

<sup>5</sup> *Edna M. Davis (Kenneth L. Davis)*, 42 ECAB 728 (1991).

<sup>6</sup> Section 8123(a) of the Federal Employees' Compensation Act provides that when there is a disagreement between the physician making the examination for the United States and the physician of the employee, a third physician shall be appointed to make an examination to resolve the conflict.

<sup>7</sup> *William C. Bush*, 40 ECAB 1064 (1989).

the medical and scientific literature indicates that the increased risk of lung cancer due to asbestos is confined to those who have developed interstitial fibrosis (*i.e.*, asbestosis). Absent asbestosis, there is no increased risk of lung cancer. Pleural thickening is not synonymous with asbestosis, and does not increase the risk of lung cancer.

“In summary, I do not believe that [the employee’s] death was caused, aggravated, accelerated or precipitated by the factors of his federal employment.”

The Board finds that Dr. Hughson provided a reasoned medical opinion, based on a complete medical and factual background, that the employee’s death was not causally related to exposure to asbestos or other materials during federal employment from 1944 to 1947. It is well established that when a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.<sup>8</sup> The Board finds that Dr. Hughson’s report is entitled to special weight and represents the weight of the evidence in this case.

The decision of the Office of Workers’ Compensation Programs dated March 13, 1997 is affirmed.

Dated, Washington, D.C.  
June 9, 1999

David S. Gerson  
Member

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>8</sup> *Harrison Combs, Jr.*, 45 ECAB 716, 727 (1994).