

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WAYNE L. JOHNSTONE and DEPARTMENT OF THE NAVY,
MARE ISLAND NAVAL SHIPYARD, Vallejo, Calif.

*Docket No. 98-13; Submitted on the Record;
Issued June 28, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has established that he sustained a pulmonary disorder in the performance of duty, causally related to factors of his federal employment.

On March 15, 1996 appellant, then a 47-year-old insulator foreman, filed a claim alleging that he sustained a respiratory disorder due to his exposure to asbestos since 1967. In support of his claim, appellant submitted an undated employing establishment computerized data form regarding the status of his employment and noting as a handicap "pulmonary or respiratory disorders." Also submitted was a March 25, 1995 employing establishment medical surveillance program roentgenographic interpretation form which had a box checked indicating that appellant's film showed abnormal findings consistent with pneumoconiosis, a box checked indicating that appellant had pleural abnormalities consistent with pneumoconiosis, a box checked indicating that there was pleural thickening in the left lobe with an A1 profile. No other positive findings were indicated. These results were stamped as being reviewed by Dr. Edward W. Swenson, a Board-certified radiologist and B-reader, on December 29, 1995. No narrative interpretation accompanied the form report.

By letters to appellant and the employing establishment dated May 22, 1996, the Office of Workers' Compensation Programs requested further information, including appellant's exposure history and a comprehensive medical report with examination details and an opinion on causal relation.

In response, the employing establishment provided appellant's employment history and information documenting that he was exposed to asbestos from 1967 until 1973 when the use of respirators was implemented. Appellant also stated, in describing his employment history, that he was exposed to asbestos without precautions until 1973 and that his exposure with protection available continued until September 3, 1995.

On July 16, 1996 the Office referred appellant to Dr. Francis T. Healy, a Board-certified internist specializing in pulmonary diseases, for a second opinion examination. The Office noted that it was also providing a statement of accepted facts, questions to be answered and the Office medical examination requirements in asbestos disease cases.

By report dated September 26, 1996, Dr. Healy reviewed appellant's medical and occupational history,¹ detailed the results of his physical examination and discussed his objective testing outcomes. He noted that pulmonary function study results were normal, that the electrocardiogram demonstrated segmentalization in the inferior leads, which, when correlated with appellant's treating physician's records, turned out to be chronic, and that chest imaging in the PA, lateral and bilateral oblique positions, which were reviewed by a Board-certified radiologist, demonstrated no radiographic finding of asbestosis. Dr. Healy concluded that there was no finding of any asbestos-related disease and no respiratory impairment.

The Office then referred the case record to the Office medical adviser for his review.

By report dated October 25, 1996, Dr. Charles C. McDonald, a Board-certified internist specializing in pulmonary diseases, reviewed the medical evidence of record and noted that the pulmonary function test data showed normal mechanics, volumes and diffusion, that the chest x-rays were noted to be normal, that a B-reader report from December 29, 1995 demonstrated a plaque on the left graded at A1. He concluded that there was no condition which was related to the accepted factors of employment, that the diagnosis was a history of asbestos exposure without evidence of asbestos-related abnormalities, that appellant was not disabled from his position due to disease resulting from exposure to asbestos, that appellant had a zero degree of respiratory impairment using the American Medical Association, *Guides, to the Evaluation of Permanent Impairment* and that no additional evaluations were indicated.

By decision dated November 6, 1996, the Office rejected appellant's claim, finding that appellant had not sustained a pulmonary disease or condition resulting from exposure to asbestos in the performance of duty. The Office found that, although the employing establishment's asbestos surveillance form indicated that appellant had left pleural thickening which was graded at A1 and was consistent with pneumoconiosis, the weight of the medical evidence of record was constituted by the detailed findings and narrative report of Dr. Healy.

By letter dated November 11, 1996, appellant, through his representative, requested an oral hearing. In support of the request, appellant submitted a Kaiser Permanente radiology report which noted as history, "asbestos exposure," which diagnosed "pleural thickening," and which noted that the pleural thickening involved the right and left fifth, sixth and seventh intercostal space levels. The report was not signed but the name of "E. Ong, MD" appeared after the findings. Also submitted was a pulmonary function report from Dr. David C. Budson, a Board-

¹ Dr. Healy noted that he was unable to verify appellant's history of asbestos exposure with a statement of accepted facts. On October 15, 1996 the Office sent Dr. Healy another statement of accepted facts and queried whether its information changed his conclusions noted in the September 26, 1996 report. No further response was received from Dr. Healy.

certified pulmonologist, which concluded that appellant had a normal study without evidence of obstructive or restrictive abnormality.

At the hearing, which was held on June 26, 1997, appellant testified that he was not asserting any loss of function, but that the pleural thickening noted on the employing establishment x-rays directly contradicted Dr. Healy's findings of no asbestos-related disease or condition.

By decision dated September 2, 1997, the hearing representative reviewed appellant's burden of proof in an occupational illness claim and affirmed the prior Office decision finding that appellant had failed to submit medical evidence sufficient to establish his claim.

The Board finds that appellant has failed to establish that he sustained a pulmonary disorder or condition in the performance of duty, causally related to factors of his federal employment.

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of his claim, including the fact that he is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time-limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed is causally related to the employment injury.³

In the instant case, appellant has established that he is an employee of the United States and that his claim was timely filed. However, he has not established that he sustained an injury in the performance of duty as alleged.

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;⁴ (2) a factual statement identifying the employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;⁵ 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.⁶ The medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence. 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

² 5 U.S.C. §§ 8101-8193.

³ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ *See Ronald K. White*, 37 ECAB 176, 178 (1985).

⁵ *See Walter D. Morehead*, 31 ECAB 188, 194 (1979).

⁶ *See generally Lloyd C. Wiggs*, 32 ECAB 1023, 1029 (1981).

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,⁷ must be one of reasonable medical certainty⁸ 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.⁹

In the instant case, appellant submitted some medical evidence reporting that he had some limited pleural thickening, which also reported that he had a history of asbestos exposure. However, none of the medical evidence submitted by appellant provided a rationalized medical opinion relating the development of this pleural thickening to appellant's years of asbestos exposure and explaining the relationship. Further, appellant has not submitted any evidence demonstrating or supporting that he has any disability due to pleural thickening, or has any permanent impairment due to pleural thickening that would entitle him to a schedule award under the Act.¹⁰

Therefore, appellant has failed to meet his burden of proof to establish his claim.

Accordingly, the decision of the Office of Workers' Compensation Programs dated September 2, 1997 is hereby affirmed.

Dated, Washington, D.C.
June 28, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

⁷ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁸ *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

⁹ *See William E. Enright*, 31 ECAB 426, 430 (1980).

¹⁰ 5 U.S.C § 8101 *et seq.*