

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BERNICE RAYMOND (claiming as widow of RILEY RAYMOND) and
DEPARTMENT OF THE NAVY, NAVY PUBLIC WORKS CENTER, Oakland, Calif.

*Docket No. 97-1397; Submitted on the Record;
Issued March 15, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether the employee's death on May 28, 1993 was causally related to his federal employment.

This case has been before the Board previously. By order dated August 21, 1996, the Board remanded the case to the Office of Workers' Compensation Programs to consider relevant evidence properly submitted by appellant and received by the Office but not reviewed before the Office issued a decision on June 20, 1994.¹ The facts and background of the case contained in the prior order is incorporated herein by reference.

Following the Board's August 21, 1996 order, on September 26, 1996, the Office requested that Dr. Charles C. McDonald, an Office medical consultant who is a Board-certified pulmonologist, provide an opinion regarding the relationship between the employee's lung condition and death, based on a review of the medical record and a statement of accepted facts. By decision dated November 20, 1996, the Office denied the claim, crediting the opinion of Dr. McDonald.

The relevant medical evidence includes the employee's death certificate which lists the immediate cause of death as cardiac arrest due to ventricular tachycardia due to mesothelioma of the left lung. An autopsy report includes diagnoses of adenocarcinoma of the left lung, chronic obstructive pulmonary disease and arteriosclerotic cardiovascular disease. The employee's treating Board-certified internist, Dr. Thomas Cuff, provided office notes in which he diagnosed adenocarcinoma of the lung and a September 9, 1993 letter in which he advised that appellant had a history of asbestos exposure and smoking and noted the autopsy findings. He opined that asbestos exposure had been linked to bronchogenic carcinomas. In an October 4, 1996 report, Dr. McDonald advised that the medical record contained contradictory data in that office notes and autopsy findings indicated a diagnosis of adenocarcinoma of the lung whereas the death

¹ Docket No. 94-2340.

certificate listed mesothelioma as a cause of death. He further noted that the microscopic portion of the autopsy report was not in the record and concluded:

“In the absence of interstitial fibrosis due to asbestos exposure, the [employee’s] lung cancer can be presumed to be secondary to his heavy history of cigarette use. No markers of asbestos exposure have been described either clinically in the [employee’s] progress notes or in the autopsy report. Therefore, his asbestos exposure was unrelated to his death from adenocarcinoma of the lung.”

The Board finds that appellant has not met her burden of proof.

An employee seeking benefits under the Federal Employees’ Compensation Act² has the burden of establishing the essential elements of his or her claim³ including the fact that the individual is an “employee of the United States” within the meaning of the Act,⁴ that the claim was timely filed within the applicable time limitation period of the Act,⁵ 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 are causally related to the employment injury.⁶ These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁷ However, an employee’s statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong and persuasive evidence.⁸ Likewise, 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 upon a proper factual and medical background.⁹

Causal relationship is a medical issue,¹⁰ and the medical evidence required to establish a causal relationship is rationalized medical evidence. Rationalized medical evidence is medical evidence which includes a physician’s rationalized medical 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

² 5 U.S.C. §§ 8101-8193.

³ See *Daniel R. Hickman*, 34 ECAB 1220 (1983); see also 20 C.F.R. § 10.110.

⁴ See *James A. Lynch*, 32 ECAB 216 (1980); see also 5 U.S.C. § 8101(1).

⁵ 5 U.S.C. § 8122.

⁶ See *Melinda C. Epperly*, 45 ECAB 196 (1993).

⁷ See *Delores C. Ellyett*, 41 ECAB 992 (1990); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁸ See *Robert A. Gregory*, 40 ECAB 478 (1989).

⁹ See *Kathy Marshall (Dennis Marshall)*, 45 ECAB 827 (1994).

¹⁰ *Mary J. Briggs*, 37 ECAB 578 (1986).

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.¹¹ Moreover, neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹²

In this case, following the Board's August 21, 1996 remand, the Office referred the medical record, statement of accepted facts and a set of questions to Dr. McDonald for his reasoned opinion regarding the cause of appellant's lung condition and death. His comprehensive report was based on a complete and accurate history, and he clearly explained why he believed that the employee's death was not due to employment factors. While Dr. Cuff provided some support that the employee's condition was related to asbestos exposure, he did not explain, with reference to specific medical findings in the employee's case, how and why these employment factors contributed to death. To be of probative value, the physician's rationale must address the specifics, both factual and medical, of the employee's death. The Board, therefore, finds that the weight of the medical evidence rests with Dr. McDonald's opinion, and the Office properly denied appellant's claim for compensation.¹³

¹¹ *Gary L. Fowler*, 45 ECAB 365 (1994); *Victor J. Woodhams*, *supra* note 7.

¹² *Minnie L. Bryson*, 44 ECAB 713 (1993); *Froilan Negron Marrero*, 33 ECAB 796 (182).

¹³ *See Kathy Marshall (Dennis Marshall)*, *supra* note 9.

The decision of the Office of Workers' Compensation Programs dated November 20, 1996 is hereby affirmed.

Dated, Washington, D.C.
March 15, 1999

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member