

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of TRUITT HAYNES, claiming as guardian of the dependent children of  
BRENDA M. HAYNES, and DEPARTMENT OF THE NAVY, NAVAL YARD, San Francisco,  
CA

*Docket No. 99-1941; Submitted on the Record;  
Issued August 10, 2000*

---

DECISION and ORDER

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

The issue is whether appellant has met his burden of proof to establish that the employee's death on April 7, 1996 was causally related to employment factors.

The Board finds that appellant has not met his burden of proof to establish that the employee's death on April 7, 1996 was causally related to employment factors.

In March 1993, the employee, then a 34-year-old explosives worker, filed an occupational disease claim alleging that she sustained "cancer and stress" due to working with "explosives and hazardous materials."<sup>1</sup> The employee indicated that she developed breast cancer because she was exposed to radiation from weapons she handled at work between late July and late August 1992.<sup>2</sup> By decision dated May 23, 1994, the Office of Workers' Compensation Programs denied the employee's claim on the grounds that she did not submit sufficient medical evidence to establish that she sustained breast cancer due to exposure to radiation at work.<sup>3</sup>

On April 7, 1996 the employee passed away and the death certificate listed the immediate cause of death as respiratory arrest due to pneumonia which in turn was due to metastatic breast

---

<sup>1</sup> Appellant underwent a left mastectomy in March 1993. She later filed a separate emotional condition claim and submitted a statement alleging that she developed stress because she was harassed and discriminated against at work. The record does not contain any Office decision regarding whether appellant sustained an employment-related emotional condition.

<sup>2</sup> Appellant noted that she was exposed to radiation when she had cuts on her hands and indicated that the protective gloves which were provided were not adequate.

<sup>3</sup> The Office accepted that the employee was exposed to radiation at work; the evidence of record reflects that the employee was exposed to radiation at work between late July and late August 1992 at levels below acceptable levels of exposure.

cancer. On April 21, 1997 appellant, the employee's brother and guardian of the employee's dependent children, filed a claim alleging that the employee's death on April 7, 1996 was due to breast cancer caused by exposure to radiation at work.<sup>4</sup> By decision dated November 19, 1997, the Office denied appellant's claim on the grounds that he did not submit sufficient medical evidence to establish that the employee's death was employment related. By decision dated and finalized March 1, 1999, an Office hearing representative affirmed the Office's November 19, 1997 decision.

An award of compensation may not be based on surmise, conjecture or speculation.<sup>5</sup> 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 her employment.<sup>6</sup> This burden includes the necessity of furnishing rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship.<sup>7</sup>

Appellant has not submitted sufficient rationalized medical evidence to establish that the employee's death was related to employment factors and, therefore, the Office properly denied his claim.

Appellant submitted a November 16, 1996 report of Dr. Mark A. Huffman, a Board-certified family practitioner specializing in emergency medicine, to whom appellant's attorney sent the case record for review. He discussed the employee's exposure to radiation and indicated that breast cancer generally develops 20 to 30 years after exposure to radiation. Dr. Huffman indicated that the employee had a high risk of recurrence of breast cancer due to a negative estrogen receptor, a tumor greater than two centimeters and aneuploidy. He stated:

“[The employee] had no primary risk factors for breast carcinoma except for possible exposure to ionizing radiation. We have no hard objective evidence of radiation exposure, except for personal statements and possible hair loss, but no other medical records to rule out other medical causes. Certainly the literature supports that ionizing radiation is a major risk factor but 10 percent of women will develop breast cancer anyway in their lifetime and up to 75 percent may have no identifiable risk.

“Causation is at this point circumstantial, perhaps more likely than not. As pointed out, it is likely that the lack of adjuvant treatment and the other poor prognostic factors lead to progression of this disease and its ultimate damages.”

The submission of Dr. Huffman's report is not sufficient to establish that the employee died of an employment-related cause; the report is of limited probative value on the relevant

---

<sup>4</sup> Appellant did not claim that an emotional condition contributed to the employee's death.

<sup>5</sup> *Myrl Nix (Earl Nix)*, 15 ECAB 125, 126 (1963).

<sup>6</sup> *Carolyn P. Spiewak (Paul Spiewak)*, 40 ECAB 552, 560 (1989); *Lorraine E. Lambert (Arthur R. Lambert)*, 33 ECAB 1111, 1120 (1982).

<sup>7</sup> *Martha A. Whitson (Joe E. Whitson)*, 43 ECAB 1176, 1180 (1992).

issue of the present case in that it contains an opinion on causal relationship which is speculative in nature.<sup>8</sup> He noted that an employment-related cause for the employee's breast cancer was "circumstantial" and that her condition was "perhaps" more likely than not related to exposure at work. Dr. Huffman also noted the strong likelihood that nonwork factors caused the employee's condition. He did not provide a rationalized medical opinion relating the employee's breast cancer and death to employment factors.<sup>9</sup> Dr. Huffman did not explain the process through which the employee's limited exposure to radiation could have caused breast cancer.

Appellant also submitted a March 11, 1997 report of Dr. Robert Harrison, a Board-certified internist, to whom appellant's attorney sent the case record for review. In his report, Dr. Harrison stated:

"Based on ... review of the records, I conclude that radiation exposure while [the employee] was employed for the [employing establishment] may have aggravated her preexisting cancerous condition. Exposure to ionizing radiation has been associated in scientific studies with an increased risk of breast cancer. It is likely that [the employee] had preexisting nonoccupational factors that led to the development of her breast cancer. However, exposure to ionizing radiation while she was employed for the [employing establishment] may have aggravated or accelerated the underlying breast cancer risk."

Dr. Harrison's report also is of limited probative value due to the speculative nature of his opinion on causal relationship. He did not discuss the accepted work factors in any detail or provide medical rationale explaining how they could have caused a condition leading to the employee's death.

---

<sup>8</sup> See *Jennifer Beville*, 33 ECAB 1970, 1973 (1982), *Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962) (finding that an opinion which is speculative in nature is of limited probative value on the issue of causal relationship).

<sup>9</sup> See *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (finding that a medical opinion not fortified by medical rationale is of little probative value).

The decision of the Office of Workers' Compensation Programs' hearing representative dated and finalized March 1, 1999 is affirmed.

Dated, Washington, D.C.  
August 9, 2000

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Member

Michael E. Groom  
Alternate Member