

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BERDIE M. WATKINS and VETERANS ADMINISTRATION,
VETERANS ADMINISTRATION MEDICAL CENTER, Salisbury, NC

*Docket No. 98-1557; Submitted on the Record;
Issued January 20, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

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

On October 3, 1997 appellant, then a 57-year-old retired licensed practical nurse, filed a claim alleging that she sustained a respiratory disorder due to her exposure to asbestos while working at the employing establishment. Appellant retired November 8, 1990 on disability. In support of her claim, appellant indicated that she was exposed to a "light" asbestos exposure from 1981 to 1990 while performing patient care at the employing establishment and had smoked for four years from 1958 to 1962. An October 26, 1996 x-ray report noted mild interstitial and pleural changes with the accompanying "B" reading report finding parenchymal and pleural abnormalities consistent with pneumoconiosis. The "B" reading report was stamped as being reviewed on October 30, 1996 by Dr. Fred M. Dula, a Board-certified radiologist. No narrative interpretation accompanied the report. An October 26, 1996 computerized tomography (CT) scan examination report noted mild pleural and interstitial abnormalities, which were found to be consistent with early asbestosis given the history of asbestos exposure. In a February 4, 1997 medical report, Dr. Albert F. Curseen, Jr., a pulmonarist, diagnosed asbestosis based on appellant's history and her CT scan and chest x-ray from October 26, 1997.

By letters to appellant and the employing establishment dated November 25, 1997, 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 appellant was not exposed to asbestos dust during her employment from 1981 to 1990. The documentation included Veterans Administration (VA) procedures in removal of asbestos in their facilities, monitoring data and fiber count analysis and an

occupational disease checklist. Appellant resubmitted duplicate copies of the information previously sent.

By decision dated March 28, 1998, the Office rejected appellant's claim on the grounds that the evidence failed to demonstrate fact of injury.

The Board finds that appellant has not established that her pulmonary disorder was sustained in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing the essential elements of her claim.¹ This burden of proof requires that appellant establish that she sustained an injury while in the performance of duty.²

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components, which must be considered in conjunction with one another.³ The first component to be established is that the employee actually experienced the employment incident, which is alleged to have occurred. In some cases, this first component can be established by an employee's uncontroverted statement, which is consistent with the surrounding facts and circumstances and his subsequent course of action.⁴ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.⁵

In the present case, the employing establishment submitted various monitoring data and fiber count analysis, which found that no significant problems of asbestos exposure were found in and around appellant's workplace during her employment. Appellant's assertion that she was exposed to asbestos during her employment was not accompanied by the type of exposure she would have encountered as a licensed practical nurse rendering direct patient care during her nine years working in building number two. Because appellant has failed to prove the requisite exposure to asbestos during her employment, the Board finds that she has failed to establish that she sustained an injury the performance of duty.

¹ See *Margaret A. Donnelley*, 15 ECAB 40 (1963).

² *Daniel R. Hickman*, 34 ECAB 1220 (1983); see also 20 C.F.R. § 10.110(a).

³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995); see *Elaine Pendleton*, 40 ECAB 1143, 1147 (1989).

⁴ *Edgar L. Colley*, 34 ECAB 1691, 1695 (1983).

⁵ *John J. Carlone*, 41 ECAB 354, 357 (1989).

The March 28, 1998 decision of the Office of Workers' Compensation Programs is, therefore, affirmed.

Dated, Washington, D.C.
January 20, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member