

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHNNIE J. MOONEY and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Houston, TX

*Docket No. 99-1305; Submitted on the Record;
Issued July 17, 2000*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof in establishing that he sustained an occupational disease in the performance of duty.

On May 8, 1998 appellant, then a 49-year-old pipe insulator, filed a claim for occupational disease alleging that his "lung disease (asbestosis) was caused by asbestos," that he was initially aware of his illness and that it was caused by his federal employment on February 10, 1994. The employing establishment stated that appellant first reported his condition to his supervisor on May 4, 1998. The employing establishment further stated that appellant was last exposed to conditions alleged to have caused his condition on June 30, 1991.

By decision dated March 1, 1999, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that the evidence submitted was insufficient to establish that appellant was exposed to asbestos during his federal employment.

The Board finds that appellant failed to establish that he sustained an occupational disease causally related to factors of employment.

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; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; 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.¹ The medical evidence required to establish a causal relationship, generally, is rationalized

¹ See *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

medical opinion evidence.² 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 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,³ must be one of reasonable medical certainty⁴ 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.⁵

In a report dated September 23, 1994, the employing establishment stated that the "[e]ngineering [s]ervice has no documented asbestos exposure incidents as per OSHA [Occupational Safety and Health Administration] 1910.1001. Consequently, there is no record of exposure to asbestos by [appellant]. The asbestos abatement and worker protection program was begun at this medical center in 1981, and has continued to this day...." Therefore, although appellant has submitted medical evidence supporting his claim for asbestosis, and that he implicated an employment factor as having caused his condition, he is unable to establish that such exposure existed. Thus given the absence of asbestos exposure in the employing establishment, appellant has not established an employment factor that was the proximate cause of his condition.

The Board notes that the record contains medical evidence which establishes appellant's medical condition, but none of these medical reports establishes a causal relationship with appellant's work factors. For example, in a medical report dated November 15, 1993, Dr. Mark Schiefer stated that appellant's x-rays taken that day revealed interstitial irregular opacities in right upper, both middle and both lower lungs. He noted that the pleural examination was remarkable for bilateral apical pleural thickening. However, Dr. Schiefer does not establish a causal relationship between appellant's condition and exposure to asbestos at work. Further, the Board notes that Dr. Paul Harford in a medical report dated January 11, 1995 noted that appellant had pulmonary asbestosis based on pulmonary function studies and appellant relating his exposure to asbestos in the workplace. This report is of no probative value because it is based on an inaccurate history of appellant's exposure.⁶

² The Board held that, in certain cases, where the causal connection is obvious, expert testimony may not be necessary; see *Naomi A. Lilly*, 10 ECAB 560, 572-73 (1959). The instant case, however, is not one of obvious causal connection.

³ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁴ See *Morris Scanlon*, 11 ECAB 384, 385 (1960).

⁵ See *James D. Carter*, 43 ECAB 113 (1991); *George A. Ross*, 43 ECAB 346 (1991); *William E. Enright*, 31 ECAB 426, 430 (1980).

⁶ See *Marilyn L. Howard*, 33 ECAB 683 (1982).

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

Dated, Washington, D.C.
July 17, 2000

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member