U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ALBERT E. McFARLAND and DEPARTMENT OF THE NAVY, PUGET SOUND NAVAL SHIPYARD, Bremerton, WA

Docket No. 99-711; Submitted on the Record;
Issued June 5, 2000

DECISION and ORDER

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

The issue is whether appellant has established that he sustained chronic myelogenous leukemia and cardiac disease causally related to factors of his federal employment.

Appellant, then a 51-year-old planner and estimator, filed a notice of occupational disease and claim for compensation on January 13, 1997, alleging that his exposure to hazardous materials, chemicals and vehicle exhaust fumes, which contained benzene and other carcinogens, during his 32 years of employment with the employing establishment caused chronic myelogenous leukemia.[1] Over the course of his career, he worked as a pipe fitter, planner and estimator in a pipe shop (shop 56) on ships and in offices at the employing establishment. Appellant indicated that he first became aware of the chronic myelogenous leukemia on December 7, 1990, however, he had not realized that the illness was caused or aggravated by his employment until January 3, 1997, when he received new information and was made aware of probable causes of the disease. He retired from federal employment on December 4, 1991.

Appellant also submitted with his CA-2 form a detailed description of the factors of his employment that he believed caused his condition, including daily exposure to welding, paint, carbon arcing and acetylene torch fumes, inert gas and dust in shop 56, where he mostly worked, which contained benzene and other carcinogens from July 1, 1957 to December 31, 1991 during his service at the employing establishment. He also noted that he was exposed to asbestos over the years and that from 1964 until retirement he worked in nuclear areas.

Appellant further submitted a personal statement that indicated he became aware of an extremely high incidence of chronic myelogenous leukemia at the employing establishment

[1] The Board notes that appellant subsequently requested on February 12, 1998 that his claim be expanded to include his cardiac disease diagnosed in 1989, which he also believed had been caused by factors of his federal employment. By letter dated February 20, 1998, the Office notified appellant that his claim would be expanded to include the cardiac disease condition.

when he found that two employing establishment employees had been diagnosed with chronic myelogenous leukemia 27 months after his diagnosis for the condition in 1990. He further indicated his knowledge that 339 chemicals caused leukemia and that he had been exposed to many of them during his employment, but that he had significant exposure to benzene and that he believed it was the most significant cause of leukemia.

Appellant also submitted a medical report by Dr. Joseph L. Johnson, a Board-certified oncologist and internist, dated January 22, 1991 which diagnosed appellant with chronic myelogenous leukemia; a medical report by Dr. Charles Woodman, a Board-certified internist, dated February 11, 1991 which discussed appellant's medical treatment for his cardiac disease (diagnosed as congestive cardiomyopathy associated with atrial arrhythmias) since 1989 and his chronic myelogenous leukemia; a post status medical report by Dr. John Hanson, attending physician, dated July 27, 1992 which noted appellant's condition after his bone marrow transplant performed on July 11, 1991; and a medical report by Dr. Mark V. Paciotti, a Board-certified internist and physician in cardiovascular disease, dated January 6, 1997 evidencing medical treatment.

By decision dated July 25, 1997, the Office of Workers' Compensation Programs denied appellant's claim for compensation for failure to establish fact of injury.

The Office noted in its July 25, 1997 decision that appellant's claim was denied because the medical information submitted contained no medical opinion causally relating appellant's chronic myelogenous leukemia to factors of his federal employment.

Appellant requested a hearing before an Office hearing representative on August 15, 1997, which was held on July 24, 1998. At the oral hearing, appellant, through his representative, testified regarding the duties of his federal employment and his exposure to chemicals and radiation that he believed caused his chronic myelogenous leukemia. Appellant further testified that his exposure to benzene, exhaust fumes and carbon monoxide caused his cardiac disease (the additional condition included in appellant's claim on February 20, 1998) while also performing his duties at the employing establishment. He offered a witness who worked at the employing establishment with him who testified about their exposure to fumes and the air quality of the building in which they mostly worked. Appellant's representative offered into evidence medical articles and periodicals that summarized the effects of inhaling benzene and, among other things, the connection between benzene and leukemia. He and his representative further offered into evidence an attending physician's report (Form CA-20) dated April 19, 1998. The report related the history of appellant's injury, offered by appellant, as an occupational exposure to benzene, and possibly other chemicals and radiation exposure from 1964. The form report at question eight read "[D]o you believe the condition found was caused or aggravated by an employment activity?" to which Dr. Johnson replied "I do not know. He was exposed, however, to conditions known to be carcinogenic." During the hearing, the Office hearing representative noted that the CA-2 form was the only medical document received for consideration at that time and that such evidence was insufficient to establish causal relationship. Appellant and his representative were told that the form report lacked a rationalized opinion regarding the medical connection between his federal employment duties and the conditions claimed. After the hearing representative explained the deficiencies of appellant's case, he

afforded appellant and his representative 30 days to submit a narrative medical report that included an accurate history of appellant's exposure to benzene and whether or not his exposure caused the claimed conditions. Appellant did not submit the requisite medical evidence requested by the Office at the oral hearing within the allotted time frame.

Based upon the evidence of record, the Office on September 23, 1998 affirmed its July 25, 1997 decision denying appellant compensation benefits.

The Board finds that on September 23, 1998 the Office properly affirmed its prior decision dated July 25, 1997 because appellant failed to meet his burden of proof in establishing that he sustained chronic myelogenous leukemia and cardiac disease causally related to factors of his federal 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.[2] The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, showing a causal relationship between the claimed conditions and his federal employment.[3]

In the present case, appellant has submitted medical evidence diagnosing his conditions. Dr. Johnson has diagnosed appellant with chronic myelogenous leukemia and Dr. Woodman discussed in his February 11, 1991 report appellant's cardiac disease diagnosed as congestive cardiomyopathy. Furthermore, appellant has alleged that exposure to benzene and other carcinogens during his federal employment from 1957 to 1991 contributed to his conditions of chronic myelogenous leukemia and cardiac disease.

The medical evidence of record, however, is not sufficient to establish a causal relationship between the claimed conditions and his federal employment.[4] Drs. Woodman, Hanson and Paciotti offered no opinions regarding the cause of appellant's diagnosed conditions, but mainly noted diagnoses and medical treatment provided appellant. As noted above, the medical evidence must be based on a complete background and must contain an opinion with supporting rationale. It is appellant's burden to submit medical evidence causally relating the diagnosed condition and factors of his employment. Dr. Johnson was the only physician of record who offered any opinion regarding causal relationship, in answering the question "[D]o you believe the condition found was caused or aggravated by an employment activity?" to which

[2] *Victor J. Woodhams*, 41 ECAB 345 (1989).

[3] *See Walter D. Morehead*, 31 ECAB 188 (1979).

[4] *Id.*

he replied "I do not know. He was exposed, however, to conditions known to be carcinogenic." Dr. Johnson did not provide a history of appellant's exposure to benzene or any other alleged carcinogens or otherwise demonstrate familiarity with the nature and extent of appellant's alleged exposure. He did not form a medical opinion based on appellant's exposure history or relate that his conditions were caused by his employment. Moreover, Dr. Johnson's vague opinion provided on the CA-20 form about the cause of appellant's exposure clearly indicated that he did not know whether there was a causal relationship between appellant's conditions and his employment. His comment that appellant was exposed to conditions known to be carcinogenic is speculative at best as it is unsupported by medical rationale. To be of probative value, medical evidence must be provided by a physician and must be specific to appellant rather than general in nature.[5] Appellant was afforded the opportunity to correct the deficiencies in his case, clearly pointed out to him during the oral hearing on July 24 1998, however, he failed to submit such medical opinion evidence.

The excerpts from publications offered into evidence by appellant at the hearing regarding the effects of benzene cannot be considered medical opinion evidence. The Board has held that newspaper clippings, medical texts and excerpts from publications are of no evidentiary value in establishing the necessary causal relationship between a claimed condition and employment factors because such materials are of general application and are not determinative of whether the specifically claimed condition is related to the particular employment factors alleged by the employee.[6] The Board must strictly rely upon a physician's rational medical opinion submitted in support of appellant's claim to establish the causal connection relating his diagnosed conditions to the alleged work-related exposure to benzene and other carcinogens. Since appellant failed to establish that his alleged exposure to hazardous chemicals in federal employment caused his chronic myelogenous leukemia and cardiac disease, the Office properly affirmed its prior decision dated July 25, 1997 denying appellant compensation benefits.

[5] *See* 5 U.S.C. § 8101(2); *Gaetan F. Valenza*, 35 ECAB 763, 769 (1984).

[6] *William C. Bush*, 40 ECAB 1064, 1075 (1989).

The decision of the Office of Workers' Compensation Programs dated September 23, 1998 is affirmed.

Dated, Washington, D.C.
June 5, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member