U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DERRY L. MOTEN and DEPARTMENT OF THE NAVY,
LONG BEACH NAVAL SHIPYARD, Long Beach, CA

Docket No. 98-2610; Submitted on the Record;
Issued March 23, 2000

DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,
A. PETER KANJORSKI:

The issue is whether appellant has established that he sustained a pulmonary disease in the performance of duty.

On July 9, 1980 appellant, then a 41-year-old retired pipe fitter, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that he suffered from asbestosis as a result of his employment.[1] He indicated that he first became aware of his employment-related pulmonary condition on June 27, 1980; approximately six and a half years after his retirement. The Office of Workers' Compensation Programs accepted that appellant was exposed to asbestos while employed as a pipe fitter, however, the Office denied the claim on January 21, 1983 based on appellant's failure to establish the existence of a "pulmonary disease or condition resulting from exposure to asbestos in the performance of duty." An Office hearing representative subsequently affirmed the denial of compensation by decision dated December 19, 1984 and finalized on December 21, 1984.

The Board finds that the decision of the Office hearing representative dated December 19, 1984 and finalized on December 21, 1984, is in accordance with the facts and the law in this case and hereby adopts the factual findings of the Office hearing representative.

Following the Office's December 21, 1984 decision, appellant filed another Form CA-2, on September 15, 1997 alleging that he suffered from asbestosis as a result of his prior federal employment. Appellant noted that he became aware of his employment-related condition on January 15, 1996 and he submitted a similarly dated report from Dr. Robert M. Gromis, a Board-certified internist. Dr. Gromis' report noted, among other things, that appellant's chest x-ray showed "changes … consistent with pleural involvement with asbestos."

[1] Due to a loss of vision in his right eye, appellant retired on disability effective January 25, 1974. However, the record indicates that his last day in duty status as a pipe fitter was April 13, 1973.

The Office again denied the claim by decision dated May 4, 1998. In denying compensation, the Office explained that appellant's claim was duplicative of his earlier 1980 claim inasmuch as appellant had not demonstrated any additional exposure to asbestos subsequent to his initial claim. The Office, therefore, concluded that there was no basis for adjudicating appellant's September 15, 1997 claim. Appellant was advised that, if he disagreed with the Office's prior decision denying compensation, he could request reconsideration.

On May 11, 1998 appellant filed a request for reconsideration. The Office subsequently referred appellant for examination with Dr. Jerome Brown, a Board-certified internist, specializing in pulmonary diseases. In a report dated July 6, 1998, Dr. Brown noted a history of intermittent cigarette smoking of approximately 8 years' duration and a 29-year history of occupational exposure to asbestos, only 8 of which occurred as a federal civilian employee. He also noted a history of chronic productive cough, shortness of breath of 20 years' duration and diabetes. On physical examination of appellant's chest, Dr. Brown noted mildly diminished breath sounds in the left base and occasional crackles at the bases of both lungs. With respect to appellant's extremities, the doctor noted slight digital clubbing of the fingers. Dr. Brown diagnosed diabetes with neuropathy, chronic bronchitis and further stated that appellant presented no clinical evidence of asbestos-related pulmonary or parenchymal lung disease. He explained that appellant's x-ray findings did not support a diagnosis of pleural or parenchymal asbestos-related disease, despite the apparent slight digital clubbing and the presence of occasional basal crackles. Dr. Brown further noted that appellant's pulmonary function testing was completely normal, except for the presence of mild metabolic acidosis. He explained that the objective studies did not correlate at all with appellant's symptomatology, thereby indicating there was no pulmonary source for appellant's shortness of breath. Dr. Brown surmised that appellant's limitations were more likely the result of his diabetic neuropathy. He also indicated that appellant's chronic bronchitis by history was neither caused nor aggravated by his federal employment. In conclusion, Dr. Brown reiterated his belief that appellant did not have a work-related asbestos pulmonary condition and he further stated that appellant had no apparent functional abnormality related to his asbestos exposure.

In a merit decision dated July 24, 1998, the Office found that appellant failed to establish that he had an asbestos-related condition causally related to his accepted employment exposure. The Office explained that the weight of the medical evidence rested with Dr. Brown's July 6, 1998 findings. Accordingly, the Office denied modification of the prior decision dated December 19, 1984 and finalized on December 21, 1984.

The Board finds that appellant has failed to establish that he sustained a pulmonary disease in the performance of duty.

In an occupational disease claim, in order to establish that an injury was sustained in the performance of duty, 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 appellant 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]

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish a causal relationship.[3] Causal relationship must be established by rationalized medical opinion 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 physician's opinion must be based on a complete factual and medical background of the claimant. Moreover, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty and it must be supported by medical rationale, which sets forth the nature of the relationship between the diagnosed condition and claimant's specific employment factors.[4]

In the instant case, while the Office accepted the fact that appellant was exposed to asbestos during the course of his federal civilian employment, the Office found the medical evidence insufficient to establish that appellant suffered from a pulmonary disease arising from his accepted exposure. The vast majority of the medical evidence of record predates the two most recent medical reports provided by Drs. Gromis and Brown by at least 11 years. As such, this earlier evidence is of limited probative value in determining whether appellant currently suffers from an employment-related pulmonary disease.

Dr. Gromis, in his January 15, 1996 report, noted that appellant had x-ray changes "consistent with pleural involvement with asbestos." His diagnosis appears to be based exclusively on appellant's x-ray changes and his reported occupational exposure of "over 20 years." Although the doctor provided a detailed discussion of the effects of inhaling asbestos fibers, Dr. Gromis' comments were primarily related to the "general population." His report is essentially a primer on the development of asbestos-related pulmonary disease. Dr. Gromis did not specifically comment on the reported findings on physical examination nor did he discuss appellant's apparently normal objective studies. In view of the noted deficiencies in Dr. Gromis' report, the Board finds that his reports are of diminished probative value.

In contrast, Dr. Brown provided a detailed analysis of appellant's x-ray findings, physical examination and objective studies and he concluded that appellant did not have an asbestos-related pulmonary condition and no apparent functional abnormality related to his asbestos exposure. Additionally, while Dr. Brown diagnosed chronic bronchitis by history, he specifically noted that this condition was neither caused nor aggravated by appellant's federal employment. Inasmuch as Dr. Brown provided a rationalized opinion regarding appellant's current pulmonary condition, the Office properly relied upon this report to conclude that appellant failed to carry his burden under the Federal Employees' Compensation Act.

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

[3] *Id.*

[4] *Id.*

Accordingly, the Board concurs with the Office's determination that appellant failed to establish that he sustained an asbestos-related condition causally related to his accepted employment exposure.

The July 24, 1998 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.
March 23, 2000

George E. Rivers
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member