

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GORDON M. SQUIRE and DEPARTMENT OF THE NAVY,
PUGET SOUND NAVAL SHIPYARD, Bremerton, WA

*Docket No. 99-584; Submitted on the Record;
Issued May 11, 2000*

DECISION and ORDER

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

The issue is whether the Office of Workers' Compensation Programs properly found that appellant failed to meet his burden of proof to establish that his alleged pulmonary condition was sustained in the performance of duty.

On September 18, 1979 appellant, a 42-year-old machinist, filed a claim for benefits based on occupational disease, alleging that he sustained a disease or disability caused or aggravated by factors of employment; *i.e.*, his exposure to asbestos dust. The Office accepted appellant's claim for asbestos exposure.

On June 24, 1997 appellant filed a claim for benefits, alleging that he had sustained an asbestos-related pulmonary condition caused or aggravated by his exposure to asbestos. In support of his claim, he submitted a March 18, 1997 report from Dr. Robert W. Enquist, Board-certified in pulmonary medicine and his treating physician, who advised that appellant had a 24-year history of smoking a pack a day and noted no increasing cough, shortness of breath or sputum production during the examination. He diagnosed asbestos-related benign pleural disease, chronic obstructive pulmonary disease, hypertension and atherosclerotic cardiovascular disease.

By letter dated July 18, 1997, the Office advised appellant that the evidence he submitted was not sufficient to determine whether he was eligible for compensation benefits and that he needed to submit a detailed description of the specific employment-related conditions or incidents he believed contributed to his alleged pulmonary condition. The Office also asked him to submit a comprehensive medical report from his treating physician describing his symptoms and the medical reasons for his condition and an opinion as to whether factors or incidents, *i.e.*, his exposure to asbestos, at his employing establishment contributed to his condition. Appellant submitted medical records containing results of chest x-rays, pulmonary function studies and radiology examinations, but did not submit any additional medical reports.

In a report dated January 19, 1998, an Office medical adviser, after reviewing appellant's medical records, concluded that there were no chest x-ray reports in the record confirming a diagnosis of pleural thickening, although prior asbestos exposure from 1970 to 1985 could have resulted in an asbestos-related condition. He recommended that appellant be evaluated by a Board-certified specialist.

In order to clarify whether appellant had sustained a pulmonary condition or disease caused by his work-related exposure to asbestos, the Office referred appellant's claim to Dr. Jonathan H. Ostrow, Board-certified in internal medicine and a specialist in pulmonary medicine, who examined appellant on March 17, 1998.

In a report dated March 18, 1998, Dr. Ostrow stated that appellant had an 18 year, pack a day smoking history in addition to a history of occupational asbestos exposure. He indicated that the chest x-rays appellant underwent from 1970 through 1996 were predominantly normal and that none of them indicated that appellant had pleural or parenchymal disease. Dr. Ostrow also advised that the 10 spirometries appellant underwent between August 2, 1979 and September 10, 1996 were all normal and stated that he had recorded multiple normal lung diffusing capacity measurements. He concluded that, although appellant had a history of intermittent moderated secondary asbestos dust exposure at the employing establishment between 1970 and the mid 1980's, there was no evidence of an asbestos-related condition. Dr. Ostrow specifically ruled out interstitial pulmonary fibrosis, pleural thickening or calcification. He advised that all of the above normal pulmonary function tests correlated with appellant's subjective history of experiencing no breathlessness in his normal daily activities. Dr. Ostrow concluded that, because appellant had no subjective or objective evidence of respiratory impairment, he could continue to work at his job without restrictions.¹

By decision dated March 30, 1998, the Office denied appellant's claim, finding based on Dr. Ostrow's report that he failed to establish that he had sustained a medical condition or disability causally related to factors of his federal employment.

The Board finds that appellant failed to meet his burden of proof to establish that he sustained a pulmonary condition causally related to his exposure to asbestos in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing that the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.³ These are the

¹ Dr. Enquist submitted a report dated February 5, 1998 in which he essentially reiterated his previous findings and conclusions.

² 5 U.S.C. §§ 8101-8193.

³ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

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. The medical evidence required to establish causal relationship is usually rationalized medical evidence. 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, must be one of reasonable medical certainty 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 the present case, the Office accepted appellant's claim for asbestos exposure caused by factors of his federal employment. Appellant has not submitted a probative, rationalized medical opinion, however, sufficient to establish that he sustained a pulmonary condition or disease caused by his employment-related exposure to asbestos. In this regard, the Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.⁶ Neither the fact that the condition became apparent during a period of employment nor the belief that the condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.⁷ Causal relationship must be substantiated by reasoned medical opinion evidence which is appellant's responsibility to submit. In the instant case, appellant failed to submit a rationalized medical opinion which establishes that he sustained a pulmonary condition causally related to asbestos exposure in the performance of duty.

The reports from Dr. Enquist do not constitute sufficient medical evidence demonstrating a causal connection between appellant's alleged pulmonary condition and factors of his employment. Causal relationship must be established by rationalized medical opinion evidence. The reports from Dr. Enquist merely state his findings and conclusions that appellant had a chronic obstructive pulmonary disease, asbestos-related pleural disease, hypertension and atherosclerotic cardiovascular disease. His reports do not contain a probative, rationalized

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁵ *Id.*

⁶ *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

⁷ *Id.*

medical opinion addressing how appellant's alleged pulmonary condition was caused or contributed to by factors of his federal employment; *i.e.*, his exposure to asbestos.

Appellant was referred for a second opinion examination with Dr. Ostrow, Board-certified in internal medicine and a pulmonary specialist, who concluded after examining appellant and reviewing his medical records that, although appellant had a history of intermittent moderated secondary asbestos dust exposure at the employing establishment between 1970 and 1985, he showed no evidence of an asbestos-related condition or disease. He specifically stated that appellant did not have interstitial pulmonary fibrosis, pleural thickening or calcification, advised that all of the chest x-rays appellant underwent from 1970 through 1996 were normal and opined that none of them revealed any indications of pleural or parenchymal disease. Dr. Ostrow also advised that appellant underwent 10 spirometries between August 2, 1979 and September 10, 1996 which reflected multiple normal lung diffusing capacity measurements. Based on these records which indicated that appellant showed no subjective or objective evidence of respiratory impairment, he concluded that he could continue to work at his job without restrictions. Therefore, the weight of the medical evidence, as represented by Dr. Ostrow, indicates that appellant failed to establish that he had a pulmonary condition or disease caused by his work-related exposure to asbestos.

As there is no probative, rationalized medical evidence addressing and explaining why appellant's alleged pulmonary condition and disability was caused by factors of his employment, his exposure to asbestos, he has not met his burden of proof in establishing that he sustained a pulmonary condition stemming from factors of his federal employment.

The decision of the Office of Workers' Compensation Programs dated March 30, 1998 is hereby affirmed.⁸

Dated, Washington, D.C.
May 11, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

⁸ In a letter accompanying his appeal to the Board, appellant stated that he wished to submit additional medical evidence in support of his claim. The Board does not have jurisdiction to consider any new evidence; however, appellant may submit such evidence in a request for review to the Office pursuant to 5 U.S.C. § 8128. 20 C.F.R. § 501(c).