

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GLENDA MAE ROBBINS, claiming as the widow of DAVID ROBBINS and
DEPARTMENT OF THE NAVY, UNITED STATES MARINE CORPS BASE,
Camp Pendleton, CA

*Docket No. 00-492; Submitted on the Record;
Issued February 15, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
PRISCILLA ANNE SCHWAB

The issue is whether appellant met her burden of proof to establish that the employee's death on February 24, 1999 was causally related to the accepted employment injuries, pleural thickening and parenchymal asbestosis.

On June 12, 1980 the employee, then a 46-year-old boiler plant operator, filed a notice of occupational disease alleging that he had asbestosis as a result of his exposure to asbestos at his federal employment. The claim was accepted for pleural thickening and parenchymal asbestosis as a result of his exposure to asbestos. On June 11, 1985 the employee received a schedule award for 34 percent permanent respiratory impairment as a result of his accepted conditions.

On April 12, 1999 the employee's widow, appellant, filed a claim for compensation (Form CA-5) alleging that her husband's accepted employment injuries contributed to his death, which occurred on February 24, 1999. On the attending physician's report dated April 28, 1999 Dr. Preston Gable, a Board-certified internist specializing in hematology and medical oncology, diagnosed metastatic colon cancer as the cause of death, but noted that the employee had "some difficulty with breathing during his final weeks, thought to be related to asbestosis and/or emphysema." Dr. Gable opined: "While this patient's death was not directly caused by asbestosis, it likely did n[o]t help matters and probably contributed to symptomatic shortness of breath experienced by him during the end of his life." In further support of her claim for death benefits, appellant submitted a copy of her marriage certificate a copy of a bill from Balboa Cremation Services and a copy of the employee's death certificate, which listed the cause of death as metastatic colon cancer. The death certificate also listed emphysema and asbestosis as "other significant conditions contributing to death but not related.

On June 23, 1999 the Office of Workers' Compensation Programs requested that the Office medical adviser review the case. The Office medical adviser found that the employee died from metastatic colon cancer. She opined that the pleural thickening and asbestosis had

remained relatively stable and, absent the cancer, the employee would have probably continued to live with asbestosis for some time.

In a decision dated September 2, 1999, the Office denied appellant's claim for death benefits, finding that the evidence failed to establish that the metastatic colon cancer and resultant death were causally related to the accepted conditions of pleural thickening and asbestosis.

The Board finds that the employee's death on February 24, 1999 was not causally related to his accepted work-related conditions of pleural thickening and parenchymal asbestosis.

In a claim for death benefits under the Federal Employees' Compensation Act, the claimant for benefits has the burden of proof to establish the necessary elements of his or her claim.¹ The claimant must prove by the weight of the reliable, probative and substantial evidence the existence of a causal relationship between an employee's death and the factors of his or her federal employment.²

The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence.³ 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 employee'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.⁴

The evidence submitted by appellant is not sufficient to sustain her burden of proof. Although the death certificate lists emphysema and asbestosis as "other significant conditions contributing to death," there is no accompanying medical opinion that would clarify how these conditions caused or contributed to the employee's death. Dr. Gable noted that death was caused by metastatic cancer. Although the employee had some difficulty breathing in his last few months, and Dr. Gable noted that this "likely did n[o]t help matters and probably contributed to symptomatic shortness of breath experienced by him during the end of his life," this opinion is not sufficient to establish that appellant's death was due to his accepted condition of asbestosis. An opinion that employee had difficulty breathing does not imply that this difficulty caused his death. Furthermore, the fact that these diseases "likely did n[o]t help matters" is speculative regarding the cause of the employee's death.

¹ *Judith L. Albert (Charles P. Albert)*, 47 ECAB 810, 815 (1996); *Darlene Menke (James G. Menke, Sr.)*, 43 ECAB 173 (1991).

² *Martha A. Whitson (Joe E. Whitson)*, 43 ECAB 1176 (1992).

³ *Kathy Marshall (Dennis Marshall)*, 45 ECAB 827, 832 (1994).

⁴ *Id.*

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that the employee's death occurs during a period of employment, nor the belief that his death was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship. Causal relationship must be established by rationalized medical opinion evidence. Appellant failed to submit such evidence and the Office, therefore, properly denied appellant's claim for compensation.⁵

The September 2, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
February 15, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member

⁵ *Alfredo Rodriguez*, 47 ECAB 437 (1996); *Kathy Marshall*, *supra* note 3 at 834.