

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ROSE M. COLEND A, claiming as widow of STEPHEN COLEND A and  
DEPARTMENT OF THE NAVY, NEW YORK NAVAL SHIPYARD, Brooklyn, NY

*Docket No. 02-1996; Submitted on the Record;  
Issued December 13, 2002*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
MICHAEL E. GROOM

The issue is whether appellant has established that the employee sustained a lymphocytic lymphoma causally related to radiation exposure during federal employment.

On August 10, 2000 the employee, then a 90-year-old retired engineer, filed an occupational disease claim alleging that his lymphocytic lymphoma was causally related to radiation exposure during his federal employment. In a narrative statement, the employee indicated that he was exposed to radioactive materials from 1946 to 1974, when he retired from federal employment. He noted the positions he held while in federal employment, alleging that at times he was exposed to radioactive materials and was responsible for transferring radioactive "pills."

In a report dated July 5, 2000, Dr. Michael Schleider, an oncologist, provided a history of employment-related radiation exposure around 1970, diagnosing lymphocytic lymphoma. Dr. Schleider opined that there was a reasonable probability that the employee's prior radiation exposure could have contributed to the development of his condition.

In a letter dated November 9, 2000, the Office of Workers' Compensation Programs requested that the employee submit additional evidence. The letter also requested that the employing establishment provide information regarding radiation exposure.

On November 26, 2000 the record indicates that the employee died. Appellant, the employee's spouse, continued to pursue the claim.

In a decision dated December 21, 2000, the Office denied the claim, finding that the medical evidence was insufficient.

By letter dated August 13, 2001, appellant requested reconsideration. In a statement dated July 25, 2001, appellant stated that the employee had transported cesium 137 approximately 10 times while at the employing establishment in 1944. The employee's son

submitted a statement also alleging that his father had informed him of transporting cesium 137 in 1944. In a report dated April 26, 2001, Dr. Schleider stated that there was a direct cause and effect relationship between occupational radiation exposure and the employee's disease process. Dr. Schleider reported that appellant had transported cesium 137 in a private automobile approximately 10 times, and such exposure in a confined space resulted in the delayed onset of lymphocytic leukemia.

In a decision dated March 8, 2002, the Office denied modification of the prior decision. The Office stated that the allegations regarding transportation of radioactive materials was hearsay evidence that was not substantiated by the record, and since Dr. Schleider based his report on such allegations, it was not competent evidence.

The Board finds that the case is not in posture for decision.

In this case there are specific allegations regarding exposure to radioactive materials, with supporting medical evidence. Although it is the burden of an employee to establish his or her claim, the Office also has a responsibility in the development of the factual evidence, particularly when such evidence is of the character normally obtained from the employing establishment or other government source.<sup>1</sup> In order to properly adjudicate the claim, it is important to secure evidence from the employing establishment with respect to the actual nature and extent of the employee's radiation exposure. The November 9, 2000 letter was addressed to appellant, with a copy to the employing establishment, and it did request further information from the employing establishment. The record, however, does not contain any specific response from the employing establishment with respect to the relevant issues in the case.

On remand, the Office should secure all relevant evidence from the employing establishment with respect to appellant's radiation exposure. After such further development as is deemed necessary, it should issue an appropriate decision.

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<sup>1</sup> *Victor D. Timian*, 43 ECAB 249 (1991).

The decision of the Office of Workers' Compensation Programs dated March 8, 2002 is set aside and the case remanded to the Office for further action consistent with this decision of the Board.

Dated, Washington, DC  
December 13, 2002

Michael J. Walsh  
Chairman

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member