

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ROBERT O. WALLRATH and DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS ADMINISTRATION MEDICAL CENTER, Houston, TX

*Docket No. 03-723; Submitted on the Record;  
Issued August 15, 2003*

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DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,  
A. PETER KANJORSKI

The issue is whether appellant met his burden of proof to establish that he sustained an asbestosis condition while in the performance of duty.

This is the second time this case has been before the Board. On May 8, 1998 appellant, a 50-year old welder, filed a claim for benefits based on occupational disease, alleging that he had developed a lung disease caused or aggravated by factors of his federal employment. By decision dated September 27, 2000, the Office of Workers' Compensation Programs denied appellant's claim, finding that appellant failed to submit evidence sufficient to establish that his claimed asbestosis condition was causally related to employment factors. In a decision dated January 10, 2002,<sup>1</sup> the Board set aside the Office's decision, finding that there was a conflict in the medical evidence regarding whether appellant's work-related exposure to asbestos resulted in his asbestosis condition. The Board therefore remanded to the district Office for appellant to be referred to an impartial medical specialist to resolve the outstanding conflict in medical evidence.

On March 12, 2002 the Office referred appellant for a referee medical examination with Dr. Gary K. Freedman, a specialist in pulmonary medicine.

In a report dated April 10, 2002, Dr. Freedman stated findings on examination, reviewed the medical evidence and the statement of accepted facts and concluded that appellant did not have asbestosis. Dr. Freedman noted that appellant had only limited exposure to asbestos since 1989. He further stated that given the fact that appellant denied having asbestos exposure prior to 1989 and had experienced only intermittent, relatively low levels of exposure since that time, the extent of such exposure would not cause asbestosis within a reasonable medical probability.

By decision dated May 20, 2002, the Office denied appellant's claim, finding that appellant failed to establish fact of injury. The Office found that Dr. Freedman's referee medical opinion that appellant did not have asbestosis represented the weight of the medical evidence.

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<sup>1</sup> Docket No. 01-235 (issued January 10, 2002).

By letter dated June 13, 2002, appellant's attorney requested a review of the written record.

Appellant submitted a June 1, 2002 report from Dr. Louis H. Roddy, Board-certified in internal medicine, who stated that chest x-rays done in November 2001 revealed pleural calcifications suggestive of asbestosis, which combined with his history made an asbestosis diagnosis quite likely. Dr. Roddy stated that this diagnosis was bolstered by a May 9, 2002 high resolution computerized axial tomography (CAT) scan which revealed pleural plaque formation.

By decision dated November 8, 2002, an Office hearing representative affirmed the Office's May 20, 2002 decision.

The Board finds that appellant did not meet his burden of proof to establish that he sustained an asbestosis condition in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act<sup>2</sup> 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.<sup>3</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>4</sup>

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.<sup>5</sup>

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

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

<sup>4</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>5</sup> *Id.*

In this case, appellant failed to submit medical evidence sufficient to establish a causal relationship between his claimed asbestosis condition and factors of his employment. The Board found in its previous decision that a conflict existed in the medical evidence regarding whether appellant's alleged asbestosis condition was causally related to his employment and remanded the case for resolution of the conflict by an independent medical examiner. The Office referred appellant to Dr. Freedman, a Board-certified pulmonary specialist, who opined that appellant did not have pulmonary asbestosis, that given his history of intermittent exposure to asbestos since 1989, such limited exposure would not cause asbestosis. The Office, in its May 20, 2002 decision, found that the weight of the medical evidence, as represented by Dr. Freedman's referee opinion, indicates that appellant did not sustain an asbestosis condition causally related to his employment. Dr. Freedman's referee report was sufficiently probative, rationalized, and based upon a proper factual background. Therefore, the Office acted correctly in according Dr. Freedman's opinion the special weight of an independent medical examiner.<sup>6</sup>

Subsequent to the Office's May 20, 2002 decision, appellant requested reconsideration and submitted Dr. Roddy's June 1, 2002 report. This report merely stated in summary fashion that appellant had asbestosis based on a CAT scan and therefore did not constitute medical evidence sufficient to override the Office's finding that Dr. Freedman's referee medical opinion represented the weight of the medical evidence. Thus, the Board affirms the November 8, 2002 Office decision, which affirmed the Office's May 20, 2002 decision finding that appellant's claimed asbestosis condition was not causally related to factors of his employment.

The decision of the Office of Workers' Compensation Programs dated November 8, 2002 is hereby affirmed.

Dated, Washington, DC  
August 15, 2003

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>6</sup> Gary R. Seiber, 46 ECAB 215 (1994).