

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ANTHONY P. SILVA and DEPARTMENT OF THE ARMY,  
MADIGAN ARMY MEDICAL CENTER, Fort Lewis, WA

*Docket No. 03-2055; Submitted on the Record;  
Issued December 16, 2003*

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DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof in establishing that he sustained tuberculosis due to factors of his federal employment.

Appellant, a 51-year-old medical clerk,<sup>1</sup> filed a notice of occupational disease on March 18, 2002 alleging that he developed tuberculosis due to exposure to patients in the hospital. He stated that he first became aware of his condition in April 1980 and developed additional symptoms in 1992. The Office of Workers' Compensation Programs requested additional factual and medical evidence in a letter dated May 21, 2002. By decision dated July 26, 2002, the Office denied appellant's claim on the grounds that he failed to establish a causal relationship between his diagnosed condition and his employment.

Appellant requested an oral hearing and by decision dated June 19, 2003,<sup>2</sup> the hearing representative denied appellant's claim finding that he failed to submit sufficient medical evidence to establish a causal relationship.

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

An employee seeking benefits under the Federal Employees' Compensation Act<sup>3</sup> has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, including the fact that the individual is an "employee of the United States" within the meaning of the Act and that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of

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<sup>1</sup> Appellant retired from the employing establishment on October 20, 2001.

<sup>2</sup> The hearing representative's decision is erroneously date stamped as June 19, 2002 rather than June 19, 2003.

<sup>3</sup> 5 U.S.C. §§ 8101-8193.

duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.<sup>4</sup>

Proceedings under the Act are not adversary in nature, nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.<sup>5</sup>

Appellant began working at the employing establishment as a medical aid. This position required him to decontaminate, pack, assemble, sterilize, inventory and deliver supplies to wards, clinics, operating rooms and troop medical clinics including daily rounds of wards and clinics to deliver and pick up material. Appellant's position description in 1980 was that of a medical supply technician. His position description included duties involved in processing, preparing and distributing medical supplies and equipment, including cleaning items manually or by using washer-sterilizers. Appellant had to clean suction machines, tubing, mattresses and bottles. Appellant was responsible for picking up dirty instruments from wards and delivering supplies on the ward. The employing establishment noted that in the late 1980s to the early 1990s use of precautions for tuberculosis evolved from the surgical mask. Furthermore, at his oral hearing, appellant testified that he picked up soiled and contaminated items twice a day from rooms with universal precautions posted.

In this case, the factual evidence submitted indicates that appellant was exposed to tuberculosis as the medical evidence reveals a positive purified protein derivative (PPD) conversion on April 4, 1980. On April 24, 1980 a nursing note revealed that appellant had no previous history of tuberculosis and no known contact with active tuberculosis. The nurse noted that appellant worked with contaminated equipment including respirators. His last negative test was in November 1979. Appellant received treatment for two months or three months which was discontinued due to his reaction to the medication. At his oral hearing, appellant denied that anyone in his immediate family had tuberculosis at the time he was diagnosed.<sup>6</sup>

The Board notes that on June 21, 1995 the Office issued FECA Bulletin No. 95-20 pertaining to claims for pulmonary tuberculosis. This bulletin states that it is no longer necessary to obtain the names of specific persons to whom the employee was exposed prior to developing tuberculosis. It further states, "Repeated exposed to populations such as prisoners, hospital patients, and IV drug users is sufficient to establish work-related exposure." The bulletin concludes that, if the claimant and the treating physician deny nonwork-related exposure, and work-related exposure has been established, the case should be accepted if evidence of

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<sup>4</sup> *Kathryn Haggerty*, 45 ECAB 383, 388 (1994).

<sup>5</sup> *Cynthia A. Dixon*, 47 ECAB 168, 170 (1995).

<sup>6</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.4.b(2) (June 1995). The Office's procedure manual provides as an example of the need for limited medical rationale in support of causal relationship, the situation in which a nurse contracts tuberculosis after a year of continuous exposure on a ward where active tuberculosis patients were housed.

tuberculosis infection is present. Evidence of tuberculosis infection includes a positive skin test and prophylactic treatment may be authorized based on a positive skin test alone.<sup>7</sup>

On remand the Office should refer appellant, the case record and a statement of accepted facts to an appropriate medical specialist for an evaluation and a rationalized medical opinion on whether appellant's exposure to tuberculosis in the performance of duty and subsequent conversion from a negative to a positive PPD test establishes the diagnosis of a tuberculosis infection and, if so, a determination of the causal relationship pending any possible nonemployment-related sources of exposure. After such development of the case record as the Office deems necessary, an appropriate decision shall be issued.

The decision of the Office of Workers' Compensation Programs June 19, 2003 is hereby set aside and remanded for further development consistent with this decision of the Board.

Dated, Washington, DC  
December 16, 2003

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>7</sup> *Claudia A. Dixon*, 47 ECAB 168, 170-71 (1995). *See also Joseph W. Kripp*, 55 ECAB \_\_\_\_ (Docket No. 03-1814, issued October 3, 2003).