

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MARTY ROBERTSON, claiming as widow of HARVEY T. ROBERTSON and  
DEPARTMENT OF THE NAVY, MARE ISLAND NAVAL SHIPYARD, Vallejo, CA

*Docket No. 02-1140; Submitted on the Record;  
Issued October 29, 2003*

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DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether the employee's death was causally related to his federal employment.<sup>1</sup>

This is the second appeal in this case.<sup>2</sup> On the first appeal, the Board reviewed the Office of Workers' Compensation Programs' August 10 and March 2, 2000 decisions, by which the Office denied appellant's claim on the grounds that the factual and medical evidence was insufficient to establish the necessary causal relationship between the employee's death and his asbestos exposure in federal employment. By decision dated July 12, 2001, the Board found the case not in posture for a decision, as further development of the medical evidence was necessary. Specifically, the Board noted that, while it was clear from the autopsy report prepared by county coroner Dr. O.G. Rosolia that he examined both of the employee's lungs, both Dr. William R. Salyer, the consulting pathologist, and Dr. Charles C. McDonald, a pulmonary specialist and Office referral physician, suggested that additional sections of the lungs be prepared for microscopic examination, especially left lung sections, explaining that findings from left lung tissue would be useful to determine whether the employee had a diffuse interstitial fibrosis consistent with asbestosis.

Because this information appeared critical to appellant's claim for benefits, and because it appeared that Dr. Rosolia might have prepared additional left lung sections or tissue that could be examined to settle the issue of diffuse versus local interstitial fibrosis, the Board set aside the Office's denial of appellant's claim and remanded the case for further development of the evidence. The Board instructed the Office to determine what specimens Dr. Rosolia obtained from the employee's lungs, whether he obtained specimens from the left lung in particular, whether he sent specimens of the left lung to Dr. Salyer for examination, and if not, whether such

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<sup>1</sup> At appellant's request, oral argument was scheduled in this case for October 9, 2003. However, appellant did not appear at the appointed time and place.

<sup>2</sup> Docket No. 00-2763 (issued July 12, 2001).

specimens are still available for examination. The Board further stated that, if specimens of the left lung existed, the Office should have them examined to help answer the questions raised by Drs. Salyer and McDonald on the issue of diffuse interstitial fibrosis. If specimens of the left lung did not exist, the Board instructed the Office to nonetheless ask its consultant, Dr. McDonald, whether a reasonable medical conclusion on diffuseness could be drawn from a careful reading of the autopsy report, which found interstitial fibrosis or conditions suggestive of severe interstitial fibrosis in both lungs. The complete facts of this case are set forth in the Board's July 12, 2001 decision and are herein incorporated by reference.

By letter dated August 13, 2001, the Office sought the requested information from Dr. Rosolia of the county coroner's office. In a response dated August 20, 2001, Dr. Rosolia stated that he had prepared slides from both lungs, and that all prepared slides had been sent to Dr. Salyer for review. Dr. Rosolia further stated that all lung tissue had subsequently been destroyed, and, therefore, it was not possible to prepare any additional slides. Dr. Rosolia was able to provide an additional medical report dated December 9, 1985, from Dr. Horton C. Hinshaw, Jr., appellant's treating physician. On September 5, 2001 the Office forwarded the additional information received from Dr. Rosolia to Dr. McDonald. In accordance with the Board's instructions, the Office informed Dr. McDonald that no additional pathologic slides were available for review, and asked him whether a reasonable medical conclusion on diffuseness could be drawn from a careful reading of the autopsy report, which found interstitial fibrosis or conditions suggestive of severe interstitial fibrosis in both lungs.

In a report dated September 6, 2001, Dr. McDonald stated that he had again reviewed Dr. Rosolia's autopsy report, as well as the additional medical evidence of record. Dr. McDonald noted that, while the additional medical records did provide some further information, it did not provide sufficient support for a diagnosis of asbestosis, and concluded:

"In summary, the evaluation at the time of the autopsy appears to be incomplete, and does not provide enough information for me to determine whether in fact asbestosis, *i.e.*, diffuse interstitial fibrosis, was present. Unfortunately, it does not appear that resolution of this question is forthcoming. Given the incomplete data, I am therefore unable to relate the claimant's death to his occupational exposure to asbestos. The terminal event appears to be an acute myocardial infarction in an individual with known coronary artery disease."

By decision dated September 18, 2001, the Office denied appellant's claim on the grounds that the factual and medical evidence was insufficient to establish the necessary causal relationship between the employee's death and his asbestos exposure in federal employment.

The Board finds that appellant has failed to meet her burden of proof to establish that the employee's death was causally related to his asbestos exposure during his federal employment.

Appellant has the burden of establishing by the weight of the reliable, probative and substantial medical evidence that the employee's death was causally related to an employment injury or to factors of his federal employment. As part of this burden, appellant must submit a rationalized medical opinion, based upon a complete and accurate factual and medical background, showing a causal relationship between the employee's death and an employment

injury or factors of his federal employment.<sup>3</sup> Therefore, appellant's unsupported belief is insufficient to establish causal relationship.<sup>4</sup>

Appellant has submitted no such medical opinion. Dr. Stephen Kolpacoff, who treated the employee for chronic obstructive pulmonary disease, reported on October 5, 1998 that the employee had known asbestos exposure and pulmonary fibrosis related to this. It was his opinion that the primary cause for the employee's demise was predominantly associated with smoking as an etiology for his arteriosclerosis and myocardial infarction. Dr. Kolpacoff added, however: "There appears to be some contributing factor from his asbestosis and pulmonary fibrosis, as this was, in addition to his smoking, causing ongoing respiratory failure." A review of the record reveals, however, that Dr. Kolpacoff had earlier indicated on appellant's claim form, completed on June 2, 1999, that the employee's death was not due to his occupational exposure to asbestos: "Atherosclerosis and myocardial infarction are not directly related to asbestos exposure -- in addition the patient continued smoking throughout his lifetime." The employee's death certificate indicated that the immediate cause of death was a myocardial infarction due to arteriosclerosis. Asbestosis was listed as a significant condition contributing to death but not related to the immediate cause. While Dr. Kolpacoff's later statements support the possibility that asbestosis exposure contributed to the employee's death, Dr. Kolpacoff's opinion is of little probative value in establishing any such contribution as fact, as he failed to explain why he initially stated that the employees' death by myocardial infarction was not casually related to his asbestos exposure.<sup>5</sup> Therefore, standing alone, Dr. Kolpacoff's reports are insufficient to discharge appellant's burden of proof. In addition to this evidence comes the autopsy report from Dr. Rosolia, who diagnosed arteriosclerosis, generalized, severe; carcinoma of the right lung, squamous cell type; and emphysema of the lungs, severe. Under emphysema, Dr. Rosolia noted (a) fibrosis of the lungs, interstitial type, severe; (b) pneumonia, bronchial, focal, moderate; and (c) edema and hyperemia, lungs and liver, passive, severe. He commented, however, that the special iron stain of the lungs did not show evidence of asbestos, and that, therefore, he was sending sections from the lungs and formalin fixed lung tissue to Dr. William R. Salyer. In a report dated November 10, 1998, Dr. Salyer advised Dr. Rosolia that he had reviewed the seven pathology slides, opined that the employee did have prior, occupational-level exposure to asbestos fibers. While this evidence was sufficient for the Office to accept that the employee had asbestos exposure, it was not sufficient to establish that the exposure contributed to his death. Therefore, the Office referred the claim file to Dr. McDonald, who opined in reports dated June 5, 2000 and more recently, September 6, 2001, that the evaluation at the time of the autopsy appeared to be incomplete, and that, therefore, he was "unable to relate the claimant's death to his occupational exposure to asbestos."

The medical evidence in this case thus consists of an equivocal, unexplained opinion from Dr. Kolpacoff supporting the possibility of a causal relationship, which is insufficient to

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<sup>3</sup> *Jacqueline Brasch (Ronald Brasch)*, 52 ECAB 252 (2001).

<sup>4</sup> *Bertha J. Soule (Ralph G. Soule)*, 48 ECAB 314 (1997).

<sup>5</sup> A medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute medical certainty, but neither can the opinion be speculative or equivocal. *Ricky S. Storms*, 52 ECAB 349 (2001); *Frank Luis Rembisz*, 52 ECAB 147 (2000).

discharge appellant's burden of proof, together with additional opinions from Drs. Rosolia, Salyer and McDonald, each of whom was unable to relate appellant's death to his occupational exposure to asbestos, thereby further weakening appellant's claim. Because the weight of the medical opinion evidence fails to establish that the employee's death on September 20, 1998 was causally related to his occupational asbestos exposure, the Board will affirm the denial of appellant's claim.

The September 18, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
October 29, 2003

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member