

**United States Department of Labor
Employees’ Compensation Appeals Board**

DONALD W. CRAIN, Appellant)	
)	
and)	Docket No. 04-937
)	Issued: July 12, 2004
DEPARTMENT OF THE NAVY, PUGET)	
SOUND NAVAL SHIPYARD, Bremerton, WA,)	
Employer)	

Appearances:
Donald W. Crain, *pro se*
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On February 26, 2004 appellant filed a timely appeal of a merit decision of the Office of Workers’ Compensation Programs dated February 27, 2003 which affirmed a March 6, 2002 decision denying his claim for a pulmonary condition. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has merit jurisdiction over the pulmonary condition claim.

ISSUE

The issue on appeal is whether appellant has established that he sustained a pulmonary condition in the performance of duty.

FACTUAL HISTORY

On April 24, 2001 appellant, then a 49-year-old welder mechanic, filed a claim for “pleural thickening of the lungs” sustained on or before September 7, 1998. He alleged that a September 17, 1998 chest x-ray revealed “asbestos-related disease.” Industrial hygiene surveys from 1973 to 1985 showed estimated exposures of less than 0.5 asbestos fibers per cubic centimeter of air, and from 1985 to 2001 less than 0.01 fibers per cubic centimeter of air. The

employing establishment asserted that appellant's condition was caused by "companies using asbestos fibers in their products" but that he was issued appropriate protection and that "effective asbestos controls" were in place. Occupational health records and job descriptions substantiate workplace exposures from April 1974 onward to asbestos, acetylene gas, argon gas, arsenic, cadmium, carbon arc grinding dust, lead, liquified petroleum gas with methylacetylene propadiene ("MAPP gas"), metal dusts and silica.

The employing establishment submitted portions of appellant's occupational health record. Appellant's July 17, 1973 preemployment physical examination was unremarkable. August 9, 1989, July 7, 1998 and February 1, 1999 chest x-rays showed bilateral apical pleural thickening. In a September 17, 1998 form letter, the employing establishment occupational health clinic advised appellant that a "B-reader," a radiologist trained in the detection of specific pulmonary conditions, noted either pleural thickening or pleural plaque. Reports of chest x-rays performed in 1978, 1979, 1993, 1995, 2000 and 2001 noted no evidence of acute cardiopulmonary disease and did not mention any pleural thickening.¹

In a September 17, 2001 letter, the Office advised that the evidence submitted was insufficient to establish his claim for an asbestos-related illness. The Office asked appellant to submit a comprehensive report from his physician explaining how and why workplace exposures would cause the claimed pulmonary condition. The Office referred appellant to Dr. Rex W. Bolin, a Board-certified internist and pulmonologist, for a second opinion examination. The statement of accepted facts provided to Dr. Bolin noted that appellant claimed an asbestos-related pulmonary disease. The Office requested that Dr. Bolin provide diagnoses of all pulmonary conditions found but address the causal relationship only of conditions "associated with ... asbestos exposure."

In a January 17, 2002 report, Dr. Bolin opined that, as the apical pleural thickening appeared stable from the 1970s through x-rays he obtained that day,² it likely predated appellant's occupational asbestos exposures which began in 1974. He diagnosed "[s]ignificant asbestos exposure without harmful effect." Dr. Bolin performed pulmonary function tests which indicated a "high possibility of reactive airways disease" clinically correlated by occasional wheezing. He opined that there was "on a more probable than not basis, a connection between this wheeze," the abnormal pulmonary function test results and appellant's "welding history." Dr. Bolin noted that although this was "not the purpose of the examination ... it [was] nonetheless reported."

By decision dated March 6, 2002, the Office denied appellant's claim on the grounds that a causal relationship was not established between any asbestos exposure and pleural thickening. Appellant requested an oral hearing before a representative of the Office's Branch of Hearings

¹ Annual pulmonary function testing by the employing establishment from 1979 to 2000 showed lung volumes and forced expiratory flow ratios at less than predicted values.

² January 17, 2002 chest x-rays showed "[m]inimal biapical pleural thickening ... consistent with mild biapical pleural scarring, "[m]inimal blunting of the posterior CP [costophrenic] angles, consistent with scar, atelectasis or small bilateral pleural effusions" and a "[s]mall linear marking involving the left lower lobe near the CP angle, consistent with scar or atelectasis."

and Review, held October 23, 2002. At the hearing, appellant newly alleged that he experienced shortness of breath which he attributed to pleural thickening, with bronchitis and upper respiratory infections due to breathing contaminated dust at work. He did not seek treatment for these conditions. Appellant noted that he still worked at the employing establishment as a welder mechanic and remained exposed to dusts, fumes, gases and asbestos. He also noted that he never smoked and had worn safety equipment as provided for more than 10 years.

By decision dated and finalized February 27, 2003, the Office hearing representative affirmed the March 6, 2002 decision. The hearing representative found that Dr. Bolin provided a well-rationalized report explaining that the pleural thickening likely predated appellant's occupational asbestos exposure.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act³ has the burden of establishing 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 filed within the applicable time limitation; that an injury was sustained while 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.⁴ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁵

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) 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 generally rationalized medical opinion 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 medial 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.⁶

³ 5 U.S.C. §§ 8101-8193.

⁴ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

⁶ *Solomon Polen*, 51 ECAB 341 (2000).

ANALYSIS

Appellant alleged that he sustained pleural thickening of the lungs due to occupational asbestos exposures beginning in 1974. Employing establishment health records also substantiated appellant's exposure to welding gases, lead, metal dusts and silica. As appellant primarily alleged that he sustained asbestos-related biapical pleural thickening, the Office developed the claim only for asbestos-related disease. The statement of accepted facts provided to Dr. Bolin, a pulmonologist and second opinion physician, noted appellant's claim for an asbestos-related pulmonary condition. Dr. Bolin was instructed to provide medical rationale addressing causal relationship only regarding asbestos exposure. However, Dr. Bolin opined in his January 17, 2002 report that appellant had hyperreactive airway disease with wheezing caused by occupational exposures related to welding. He stated that there was, "on a more probable than not basis, a connection between this wheeze," abnormal spirometry and his "welding history." The Office did not seek clarification from Dr. Bolin regarding this opinion or otherwise develop this aspect of the medical evidence prior to denying the claim.

Following issuance of the March 6, 2002 decision, appellant expanded the scope of his claim. At the October 23, 2002 hearing, he alleged that he sustained shortness of breath, bronchitis and upper respiratory infections due to workplace exposures to contaminated dust and to the effects of the biapical pleural thickening. In a February 27, 2003 decision, the Office hearing representative did not address these new allegations, but affirmed the prior denial on the grounds that appellant had not established a causal relationship between asbestos exposure and pleural thickening. The Office did not adjudicate the issue of whether appellant had established a causal relationship between dyspnea, bronchitis and any workplace exposures. Dr. Bolin's January 17, 2002 opinion posited a likely causal relationship between appellant's wheezing and his occupational exposures as a welder.

Although Dr. Bolin's opinion is not sufficiently rationalized⁷ to establish appellant's claim, it stands uncontroverted in the record and is, therefore, sufficient to require further development of the case by the Office.⁸ The Office did not undertake further development of this aspect of the claim, such as requesting that Dr. Bolin submit a supplemental report to clarify his opinion regarding any causal relationship between exposures to welding gases, dusts and fumes and appellant's wheezing. The Board finds that, under the circumstances of this case, Dr. Bolin's opinion warrants further development.

Proceedings under the Act are not adversarial in nature and the Office is not a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility to see that justice is done.⁹ Accordingly, once the Office undertakes to develop the medical evidence further, it has the responsibility to do so in a proper

⁷ See *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Frank D. Haislah*, 52 ECAB 457 (2001) (medical reports lacking rationale on causal relationship are entitled to little probative value).

⁸ *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 280 (1978).

⁹ *Jimmy A. Hammons*, 51 ECAB 219 (1999); *Marco A. Padilla*, 51 ECAB 202 (1999); *John W. Butler*, 39 ECAB 852 (1988).

manner. Therefore, the Board will remand the case to the Office for further development regarding Dr. Bolin's opinion. The Office should prepare a statement of accepted facts which includes appellant's occupational exposures and request that Dr. Bolin submit a supplemental report. If Dr. Bolin cannot provide such a report, the case should be referred to an appropriate specialist or specialists to obtain a rationalized opinion as to whether any workplace exposures caused or aggravated a pulmonary condition. Following this and any other development deemed necessary, the Office shall issue an appropriate decision in the case.

CONCLUSION

The Board finds that the case is not in posture for a decision as the case must be remanded to the Office for further development on the issue of any causal relationship between appellant's occupational exposures as a welder mechanic and any pulmonary condition.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated and finalized February 27, 2003 is set aside and the case remanded for further development consistent with this opinion.

Issued: July 12, 2004
Washington, DC

Alec J. Koromilas
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member