

She related that his symptoms included shortness of breath, pain in the chest and back, pain and swelling in the abdomen, difficulty swallowing, fever, coughing, fatigue, vomiting and weight loss. Appellant indicated that now she had become aware of the danger of exposure to asbestos and the symptoms of such exposure, she realized that could have been the cause of the employee's ailments that eventually led to his death.

At the direction of the Office, appellant filed a claim for death benefits on July 16, 2003. She indicated that the employee was treated for metastatic squamous cell carcinoma, postural hypertension, syncope and esophageal bleeding. Appellant submitted a copy of the employee's death certificate which indicated that he died on March 14, 1992. The cause of death was given as carcinoma. In a July 16, 2003 form report, Dr. C.V. Manuel, a Board-certified internist specializing in cardiovascular diseases, stated that the employee was treated for metastatic squamous cell carcinoma, postural hypertension, syncope, and esophageal bleeding. He indicated that there was no history of an injury at work. Dr. Manuel did not answer the questions of what was the direct cause of death, what were the contributory factors of death and whether the employee's death was causally related to a history of an injury at work. Appellant also submitted records relating to the employee's surgery for removal of his gallbladder. In a January 12, 1987 hospital report, Dr. Dara Vahid, a thoracic surgeon, indicated that the employee had a history of heavy alcoholism and heavy smoking with mild chronic obstructive pulmonary disease. The employee underwent a biopsy for a mass in the left side of his neck and for his esophagus on January 10, 1992. Dr. S.H. Norman, a Board-certified pathologist, indicated in a January 12, 1992 pathology report, that the biopsy on the mass on the neck showed metastatic poorly differentiated carcinoma, consistent with squamous. The biopsy of the esophagus showed fragments of poorly differentiated squamous carcinoma.

In a September 17, 2003 letter, the Office requested additional information from appellant, including an employment history, a description of work performed, the type of asbestos material used, locations where the exposure occurred, period of exposure, the number of hours of exposure by day and by week and the frequency and the type of safety precautions used. Appellant did not respond to the Office's letter.

In a December 3, 2003 decision, the Office denied appellant's claim for death benefits on the grounds that she had not established that the employee's death was related to the alleged exposure to asbestos at work.

LEGAL PRECEDENT

An award of compensation in a survivor's claim may not be based on surmise, conjecture or speculation or on appellant's belief that the employee's death was caused, precipitated or aggravated by the employment.¹ A claimant has the burden of proving by the weight of the reliable, probative and substantial evidence that the employee's death was causally related to his or her employment. The burden includes the necessity of furnishing medical opinion evidence of a cause and effect relationship based on a complete factual and medical background. The opinion of the physician must be one of reasonable medical certainty and must be supported by

¹ Sharon Yonak (Nicholas Yonak), 49 ECAB 250, 254 (1997).

medical rationale.² The right to claim compensation for wage loss or a schedule award exists only if the claimant filed a claim for wage loss or a schedule award prior to his death.³

ANALYSIS

Appellant was required to submit factual evidence to show that the employee was exposed to asbestos at work and that such exposure at work caused or contributed to his death from cancer. She presented only an allegation that the employee was exposed to asbestos at work. Appellant did not seek or receive any confirmation from the employing establishment that the employee was exposed to asbestos in his federal employment. Dr. Vahid ordered a biopsy that showed the employee had cancer. However, he did not discuss the cause of the employee's cancer or mention any exposure to asbestos at work. Similarly, Dr. Manuel indicated on the death certificate that the employee died from cancer, but he did not give a history of any employment injury nor relate the employee's death to any factor of his employment. Therefore, appellant did not submit sufficient medical evidence to establish that the employee's death was causally related to his employment.

CONCLUSION

Appellant has not met her burden of proof in establishing that the employee's death due to cancer was caused by exposure to asbestos at work or by any other factor of his employment.

² *Jacqueline Brasch (Ronald Brasch)*, 52 ECAB 252 (2001).

³ 20 C.F.R. § 10.105(e); see *Mary H. Martin*, 46 ECAB 295, 296 (1994).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs decision of September 17, 2003 be affirmed.

Issued: June 28, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member