



Appellant submitted a work history which indicated that from 1942 to 1950 he was employed in a service station, that from 1950 to 1955 he worked for the U.S. Air Force as a wheeled mechanic and as a member of the flight crew, that from 1955 to 1959 he serviced vehicles, that from 1959 to 1975 he worked as a service manager for a Chevrolet garage, and that from 1975 to April 2003 he work for the employing establishment as an auto worker and was exposed to asbestos which was in the floor tiles and the asbestos vat. He also submitted a computerized tomography (CT) report dated March 26, 2003 which revealed possibly very early findings of asbestosis and pleural thickening consistent with asbestosis.

By letter dated May 27, 2003, the Office advised appellant that the evidence submitted was insufficient to establish that he sustained an injury in the performance of duty. The Office requested that appellant submit additional information including a comprehensive medical report from his treating physician which included a reasoned explanation as to how the specific work factors or incidents identified by appellant had contributed to his claimed condition.

In response to the Office's request, appellant submitted a statement dated June 2, 2003 noting that on February 19, 1991 he was examined for an employing establishment asbestos medical surveillance program. He also noted that he was a three-pack per week smoker from 1950 to 1960 and smoked cigars from 1960 to 1975. Appellant advised that he was exposed to asbestos while replacing brakes, brake lining and clutches. He further indicated that the brake room floor in which he worked also contained asbestos and that the welding room had a container of asbestos which was used to cool cast iron.

A chest x-ray dated March 20, 2003 revealed pulmonary and parenchymal changes involving the left lung base; small focal areas of etelectasis or pulmonary nodules were not excluded. The physician recommended CT examination. Also submitted was a February 19, 1991 memorandum from the employing establishment which indicated that appellant underwent a medical examination on February 19, 1991 as part of an asbestos medical surveillance program. This revealed that no medical condition was detected and protective equipment was not required.

In a decision dated October 28, 2003, the Office denied appellant's claim on the grounds that the medical evidence was not sufficient to establish that his condition was caused by the factors of employment as required by the Federal Employees' Compensation Act.<sup>1</sup> The Office specifically advised that appellant had not submitted a medical report from a physician which provided a clear diagnosis and how it related to his employment.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Act 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 timely filed within the applicable time limitation period of the Act, that the 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

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

related to the employment injury. 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>2</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) 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 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 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>3</sup>

### ANALYSIS

In this case, it is not disputed that appellant was an automotive mechanic and was exposed to asbestos during the performance of his duties. The Board finds, however, that the medical evidence is insufficient to establish that he developed asbestos lung disease causally related to his employment duties. Appellant submitted a chest x-ray dated March 20, 2003 which revealed pulmonary and parenchymal changes involving the left lung base and noted that small focal areas of emphysema or pulmonary nodules were not excluded. The physician recommended CT examination although he noted there was no clear evidence of asbestos related pleural disease as the pulmonary parenchymal changes were nonspecific and developed since March 2000. Thereafter, appellant underwent CT examination on March 26, 2003 which revealed "possibly" very early findings of asbestosis and pleural thickening consistent with asbestosis. However, the physician's opinion was speculative. Furthermore, neither report mentioned appellant's employment as an automotive mechanic or attribute appellant's condition to his possible exposure to asbestos in this industrial setting.<sup>4</sup> The only other evidence submitted was an employing establishment memorandum detailing an asbestos medical surveillance program dated February 19, 1991 which revealed that appellant had no evidence of a medical condition.

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<sup>2</sup> *Gary J. Watling*, 52 ECAB 357 (2001).

<sup>3</sup> *Solomon Polen*, 51 ECAB 341 (2000).

<sup>4</sup> *Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete history or which are speculative or equivocal in character have little probative value).

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.<sup>5</sup> Causal relationship must be established by rationalized medical opinion evidence.<sup>6</sup> Appellant failed to submit such evidence, and the Office therefore properly denied appellant's claim for compensation.<sup>7</sup>

**CONCLUSION**

The Board therefore finds that, as none of the medical reports provided an opinion that appellant developed an employment-related injury in the performance of duty, appellant failed to meet his burden of proof.<sup>8</sup>

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 28, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 8, 2004  
Washington, DC

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

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<sup>5</sup> See *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

<sup>6</sup> *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

<sup>7</sup> With his appeal appellant submitted additional evidence. However, the Board may not consider new evidence on appeal; see 20 C.F.R. § 501.2(c).

<sup>8</sup> See *Calvin E. King*, 51 ECAB 394 (2000).