United States Department of Labor
Employees' Compensation Appeals Board

DONALD J. NIETERS, Appellant	)	
and	)	**Docket No. 04-1323**
	)	**Issued: September 16, 2004**
DEPARTMENT OF THE NAVY, PUGET SOUND NAVAL SHIPYARD, Bremerton, WA, Employer	)	

Appearances:
Donald J. Nieters, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On April 20, 2004 appellant filed a timely appeal of the January 22, 2004 merit decision of the Office of Workers' Compensation Programs, which denied his claim for employment-related chronic obstructive pulmonary disease (COPD).[1] Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of appellant's claim.

ISSUE

The issue is whether appellant established that his COPD is related to his accepted employment exposure.

[1] Although the Office found that appellant's COPD was not employment related, the Office accepted the claim for pleural thickening due to asbestos exposure.

FACTUAL HISTORY

On July 21, 2003 appellant, a 60-year-old shipfitter, filed an occupational disease claim for COPD. He indicated that he first became aware of his condition on April 7, 1993, but it was not until July 2, 2003 that he realized his condition was caused or aggravated by his employment.

Appellant was exposed to asbestos while in the U.S. Navy between 1960 and 1970. In his current position as a shipfitter, appellant was exposed to an asbestos spill in 1999. Appellant's job duties also exposed him to various other chemicals, fumes, dust, paint and lead. He also reported smoking as many as two packs of cigarettes per day over a 35-year period between 1959 and 1994.

The record included x-ray evidence of COPD dating back to 1993. Chest x-rays also revealed pleural thickening. Similar findings were observed on two computerized tomography (CT) scans administered in April and August 2002.

In a September 8, 2003 attending physician's report (Form CA-20), Dr. Marissa Fernandez-Kiemele, a Board-certified family practitioner and appellant's treating physician, reported a history of exposure to asbestos from 1960 to 1970 while appellant was in the Navy. Dr. Fernandez-Kiemele also noted intermittent asbestos exposure from 1983 to the present. A recent CT scan of the chest revealed asbestos-related pleural plaques. She also reported preexisting chronic lung disease, chronic cough and shortness of breath, COPD, asthmatic bronchitis and hypercholesterolemia. Dr. Fernandez-Kiemele stated that chest x-rays and pulmonary function studies showed significant lung disease. She diagnosed asbestos pleural plaques and COPD and checked the "yes" box indicating that appellant's diagnosed condition was caused or aggravated by his employment.

On September 18, 2003 appellant was examined by Dr. Michael S. McManus, a pulmonary specialist Board-certified in preventative medicine. He diagnosed asbestos-related pleural disease, partially work related and partially related to exposure while in the Navy. Dr. McManus also diagnosed COPD with reversible airways disease with recent exacerbation. He noted parenthetically that this latter diagnosis was "probably not work related." In an October 23, 2003 report, Dr. McManus reiterated his earlier diagnoses and again reported that appellant's severe COPD with bronchial hyperreactivity was probably not work related.

The Office referred appellant for examination by Dr. Rana T. Tan, a Board-certified internist specializing in pulmonary diseases. In a report dated December 10, 2003, she diagnosed very severe COPD due to a 68-pack-year smoking history. Dr. Tan also reported radiographic evidence for asbestos-related pleural disease with work history consistent with significant asbestos exposure. However, she stated that appellant did not have any clinical evidence of asbestosis. Regarding the etiology of appellant's COPD, Dr. Tan explained that while his employment history included numerous instances of exposure to various dusts and fumes, appellant's 68-pack-a-year smoking history was clearly the most important etiologic cause of his very severe obstructive pulmonary disease. As support for her opinion on causal relationship, Dr. Tan cited appellant's reported history that his severe chronic productive cough essentially resolved when he discontinued tobacco use. She also stated that given appellant's heavy tobacco use it was virtually impossible to assign a degree of "work relatedness" with

respect to the other airborne exposures appellant may have suffered over the years. Dr. Tan concluded that appellant was disabled due to his very severe tobacco-related lung disease.

In a decision dated January 22, 2004, the Office accepted the claim for pleural thickening due to asbestos exposure. However, the Office denied appellant's claim for employment-related COPD.

LEGAL PRECEDENT

A claimant seeking benefits under the Federal Employees' Compensation Act[2] has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence, including that any specific condition or disability for work for which he claims compensation is causally related to the employment injury.[3] Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.[4]

In order to establish that an injury was sustained in the performance of duty, 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) a 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 diagnosed condition is causally related to the employment factors identified by the claimant.[5]

ANALYSIS

The medical evidence of record does not establish a causal relationship between appellant's COPD and his accepted employment exposure. Dr. McManus in his reports consistently stated that appellant's pulmonary condition was probably not work related. Although Dr. Fernandez-Kiemele checked the "yes" box on her September 8, 2003 Form CA-20 indicating that the diagnosed asbestos pleural plaques and COPD were caused or aggravated by appellant's employment, she did not provide an explanation for her conclusion on causal relation. A physician's form report which merely checks the box marked "yes" to the inquiry concerning causal relationship is of diminished probative value as it constitutes a conclusion without the benefit of any medical rationale.[6]

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[2] 5 U.S.C. § 8101 *et seq*.

[3] *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

[4] *See Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors must be based on a complete factual and medical background of the claimant. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, in order to be considered rationalized, the opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors. *Id.*

[5] *Victor J. Woodhams*, *supra* note 4.

[6] *Barbara J. Williams*, 40 ECAB 649 (1989).

Dr. Tan in her December 10, 2003 report unequivocally stated that appellant's COPD was due to his extensive smoking history and that it was virtually impossible to otherwise apportion appellant's severe obstructive pulmonary disease to his occupational exposure. As the record is devoid of a rationalized medical opinion attributing appellant's condition to his accepted occupational exposure, the Office properly denied appellant's claim for COPD.

CONCLUSION

The Board finds that appellant failed to establish that his COPD was causally related to his accepted employment exposure.

ORDER

IT IS HEREBY ORDERED THAT the January 22, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 16, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member