United States Department of Labor
Employees' Compensation Appeals Board

LARRY J. FLOWERS, Appellant	)	
and	)	**Docket No. 04-2152**
	)	**Issued: February 11, 2005**
U.S. POSTAL SERVICE, POST OFFICE, Springfield, OH, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
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
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On September 1, 2004 appellant, through his attorney, filed a timely appeal of the Office of Workers' Compensation Programs' merit decisions dated September 8, 2003 and August 10, 2004, finding that he had not established that he developed an injury due to asbestos exposure during his federal employment. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met his burden of proof in establishing that he developed a lung condition due to his employment-related asbestos exposure.

FACTUAL HISTORY

On May 2, 2003 appellant, then a 59-year-old maintenance support clerk, filed an occupational disease claim alleging that, in 1997 he was exposed to airborne asbestos fibers in the performance of his federal job duties. Appellant stated that he first became aware of his

chronic obstructive pulmonary disease on May 10, 2000 and first related this condition to his employment on April 14, 2003.

By letter dated May 19, 2003, the Office requested additional factual and medical evidence. Appellant responded on July 11, 2003 and stated that while he worked as a maintenance support clerk he was exposed to asbestos during the summer of 1997 while the employing establishment was undergoing renovations of the heating and air conditioning systems. Appellant stated that he was also exposed to draining antifreeze during this period and that the Office accepted acute sinusitis and nasal mucosal irritation as a result of this exposure. Appellant admitted to smoking cigarettes from 1962 to 1991. He reiterated that he first became aware of his lung condition on May 10, 2000 when he was referred for pulmonary function testing.

In a memorandum dated January 30, 1998, the employing establishment noted that appellant had potentially been exposed to airborne asbestos fibers and recommended his inclusion in a medical surveillance program.

On May 22, 2000 appellant's chest x-ray was evaluated by a "B" reader for pneumoconiosis.[1] There were findings in the right hemi-diaphragm, which could represent plaqueing from pneumoconiosis. The reader recommended additional views.

In a report dated April 14, 2003, Dr. Leslie A. Bentinganan, an osteopath, diagnosed mild chronic obstructive pulmonary disease. She stated that appellant's condition began years ago when he was exposed to asbestos and antifreeze in the performance of duty and had progressively worsened.

By letter dated July 28, 2003, the Office requested additional medical findings and conclusions from Dr. Bentinganan. Dr. Anja A. Patton-Evans, a Board-certified pulmonologist, responded on August 22, 2003 and diagnosed chronic obstructive lung disease or emphysema. She stated that this condition was most commonly caused from previous smoking. Dr. Patton-Evans reviewed appellant's computerized tomography (CT) scan test results noting findings of stable basilar scarring with no bronchiectasis and no adenopathy as well as stable bi-apical scarring. She concluded, "Asbestosis changes may be very subtle or absent radiographically, even on a chest CT scan. The bibasilar and biapical scarring changes on the 1 May 2003 chest CT [scan] of [appellant] are likely related to asbestosis, given his history of asbestos exposure."

By decision dated September 8, 2003, the Office denied appellant's claim finding that he failed to submit sufficient medical evidence to meet his burden of proof. Appellant, through his attorney, requested an oral hearing. Appellant testified at his oral hearing on June 15, 2004. Appellant stated that he first noticed that he had developed a cough in 2000 and that he participated in the employing establishment's asbestos follow-up program.

[1] The Board notes that appellant's claim on May 2, 2003 was made within three years of the May 10, 2000 x-ray demonstrating possible asbestos-related lung changes. Therefore, appellant's claim is timely filed under section 8122 of the Federal Employees Compensation Act.

On June 24, 2004 Dr. Patton-Evans repeated her findings and stated: "The bibasilar and bi-apical scarring changes on the 1 May 2003 chest CT scan of [appellant] are consistent with asbestosis."

By decision dated August 10, 2004, the hearing representative denied appellant's finding that the medical evidence did not establish a causal relationship between appellant's diagnosed chronic obstructive pulmonary disease and his asbestos exposure.

LEGAL PRECEDENT

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) a factual statement identifying the 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. The medical opinion 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.[2]

ANALYSIS

In this case, appellant has submitted medical evidence diagnosing chronic obstructive pulmonary disease. He has also established that he was exposed to asbestos during the performance of his federal job duties. However, appellant has not submitted the necessary rationalized medical opinion evidence to establish a causal relationship between this diagnosed condition and his accepted employment exposure. In support of his claim, appellant submitted an April 14, 2003 report from Dr. Bentinganan, an osteopath, diagnosing mild chronic obstructive pulmonary disease. She stated that this condition began after appellant's exposure to asbestos and antifreeze and that the condition had progressively worsened. This report is not sufficient to meet appellant's burden of proof as Dr. Bentinganan did not offer any medical reasoning in support of her opinion that appellant's current condition of chronic obstructive pulmonary disease was causally related to his employment exposures. Without medical reasoning explaining how and why appellant's exposure to asbestos caused or contributed to his chronic obstructive pulmonary disease, this report lacks the necessary medical rationale to establish appellant's claim.

Dr. Patton-Evans, a Board-certified pulmonologist, submitted reports dated August 22, 2003 and June 25, 2004, diagnosing chronic obstructive lung disease or emphysema. She noted that this condition was most commonly caused from previous smoking. These reports do not support appellant's claim for chronic obstructive pulmonary disease due to his employment exposures. Instead, Dr. Patton-Evans attributed appellant's condition to his history of cigarette smoking. Therefore, these reports are not sufficient to establish that appellant developed chronic

[2] *Solomon Polen*, 51 ECAB 341, 343-44 (2000).

obstructive pulmonary disease as a result of his exposures to asbestos and antifreeze in the course of his federal employment.

Dr. Patton-Evans also reviewed appellant's CT scan test results in both her reports noting that appellant had findings of stable basilar scarring with no bronchiectasis and no adenopathy as well as stable bi-apical scarring. She concluded on August 22, 2003 that the scarring on appellant's chest CT scan was "likely related to asbestosis, given his history of asbestos exposure." In her June 25, 2004 report, Dr. Patton-Evans slightly altered her conclusion to state: "The bibasilar and bi-apical scarring changes on the 1 May 2003 chest CT scan of [appellant] are consistent with asbestosis." However, Dr. Patton-Evans did not provide any medical reasoning to support her conclusions. She did not explain how exposure to asbestos would result in the particular scarring pattern observed as opposed to appellant's known exposure to cigarette smoke for 30 years. Furthermore, Dr. Patton-Evans did not clearly state that it was her opinion that scarring on appellant's lungs was, in fact, due to his asbestos exposure. Instead she noted that these findings "were likely" or "consistent" with asbestosis. While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, neither can such opinion be speculative or equivocal. The opinion should be one of reasonable medical certainty.[3] Dr. Patton-Evans' reports do not contain the necessary clarity to meet appellant's burden of proof.

CONCLUSION

The Board finds that appellant has failed to submit the necessary rationalized medical opinion evidence to establish that he developed a lung condition as a result of his employment-related asbestos exposure.

[3] *Samuel Senkow*, 50 ECAB 370, 377 (1998).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated August 10, 2004 and September 8, 2003 are affirmed.

Issued: February 11, 2005
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member