

severe intractable coughing secondary to the asbestos exposure. The employee died on June 8, 2004 and the physician signing the employee's death certificate noted the immediate cause of death as metastatic ampullary adenocarcinoma.

Appellant contended that asbestos damaged the employee's body, not only the lungs and heart, but stomach, liver, pancreas and other body parts and noted that the employee never smoked. She noted that the employee had already lost 10 percent of each lung and had become 98 percent blind.

Appellant submitted a copy of the employee's death certificate, which noted the cause of death as metastatic ampullary adenocarcinoma. Appellant completed a Form CA-5 claim for compensation by widow, noting the history of the employee's disease as: (1) metastatic ampullary adenocarcinoma; (2) asbestosis; and (3) coronary artery disease. The physician completing the form, Dr. Noel A. Mann,¹ noted that the direct cause of the employee's death was metastatic adenocarcinoma -- ampulla and secondary causes as coronary artery disease and asbestosis. In his response to the question as to whether the employee's death was causally related to three conditions previously cited, he indicated yes by a check mark.

In a June 30, 2004 report, an Office medical adviser noted that the accepted conditions were asbestosis, pleural effusion and acute bronchitis. He stated that the employee died of metastatic ampullary adenocarcinoma and found that the accepted work-related conditions in no way worsened, hastened or caused his death.

By decision dated July 15, 2004, the Office denied appellant's claim for widow's benefits finding that the immediate cause of death as metastatic ampullary adenocarcinoma. It was noted that the hospital discharge summary listed the cause of the employee's death as advanced liver cancer and a secondary diagnosis of asbestos. The Office medical adviser determined that the employee died of metastatic ampullary adenocarcinoma that was not related to, worsened by or materially hastened by the employee's asbestos exposure. The Office denied appellant's benefit's claim on the grounds that the medical evidence did not demonstrate that the cause of death was related to the accepted work injuries

On July 23, 2004 appellant requested reconsideration and submitted general application charts of malignant tumors associated with asbestos, a statement and table regarding asbestos in Japan and textual material from the internet regarding asbestos and its injuries and a description of other injuries caused by asbestos.

By letter dated August 9, 2004, the Office advised appellant that the reason her benefits were denied was insufficient medical evidence addressing how the adenocarcinoma was related to the employee's accepted asbestos exposures.

Appellant resubmitted evidence previously considered by the Office. In a report dated August 17, 2004, Dr. Mann claimed that he had performed a Whipple procedure on the employee, who declined hospice care. Dr. Mann opined that he could not definitely say yes or

¹ Dr. Mann's specialty is not listed.

no to the question of whether there was a causal relationship between the employee's asbestos and his malignant adenocarcinoma.

By decision dated September 15, 2004, the Office denied modification of the July 15, 2004 decision, finding that the employee's malignant adenocarcinoma was not an asbestos-related condition. The Office found that appellant did not provide sufficient medical evidence to prove that the employee's malignant adenocarcinoma was causally related to his accepted asbestos exposure.

LEGAL PRECEDENT

An award of compensation in a survivors claim may not be based on surmise, conjecture or speculation or an appellant's belief that the employee's death was caused, precipitated or aggravated by the employment.²

Appellant has the burden of establishing by the weight of the reliable, probative and substantial medical evidence that the employee's death was causally related to an employment injury or to factors of his employment. As part of this burden, appellant must submit a rationalized medical opinion, based upon a complete and accurate factual and medical background, showing a causal relationship between the employee's death and an employment injury or factors of his federal employment. Appellant's unsupported belief is insufficient to establish causal relationship.³ Causal relationship is a medical issue and can be established only by medical evidence.⁴

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence. Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between an employee's diagnosed conditions and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the employee's death and the accepted conditions or employment factors identified by the employee.⁵ 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.⁶

The Board has held that excerpts from all publications, medical texts, newspaper clippings, circulars, brochures, patient hand-outs, instructional material, etc. are of no evidentiary

² *Sharon Yonak (Nicholas Yonak)*, 49 ECAB 250 (1997).

³ See *Jacqueline Brasch (Ronald Brasch)*, 52 ECAB 252 (2001); *Leonora A. Bucco (Guido Bucco)*, 36 ECAB 588 (1985); see also *Shirley Miles (William H. Miles)*, Docket No. 04-670 (issued June 28, 2004) (similar fact pattern).

⁴ *Mary J. Briggs*, 37 ECAB 578 (1986); *Umberto Guzman*, 25 ECAB 362 (1974).

⁵ *Donna L. Mims*, 53 ECAB 730 (2002).

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

value regarding a specific employee as they are of general application and are not determinative as to whether a specific condition is related to a particular employment factor.⁷

ANALYSIS

The Board finds that appellant has failed to meet her burden of proof to establish that the employee died of his accepted employment conditions of asbestosis and bronchitis. She is required to submit probative and rationalized medical evidence which provided an explanation of the causal relationship between the employee's accepted conditions of asbestosis and bronchitis and his death due to malignant ampullary adenocarcinoma. The evidence appellant submitted included the employee's death certificate, which listed the cause of death as malignant ampullary adenocarcinoma. No other causes were implicated.

The Form CA-5 claim for widow's benefits noted a history of metastatic ampullary adenocarcinoma, asbestosis and coronary artery disease, but Dr. Mann who completed the attending physician's report noted as the direct cause of death was metastatic adenocarcinoma, ampullary. This form does not support that the employee's death was due to his accepted asbestos exposure. Although Dr. Mann indicated by an affirmative check mark that the employee's death was due in part to the accepted employment conditions, he provided no medical rationale to support his conclusion. This diminishes the probative value of his report. The Board has held that causal relationship indicated by a check mark without more by the way of medical rationale is insufficient to establish causal relationship.⁸ In an August 17, 2004 report, Dr. Mann noted that he could not say yes or no with regard to whether there was a causal relationship between the asbestosis and the employee's death from adenocarcinoma. Therefore, the reports of Dr. Mann are insufficient to support appellant's claim.

The Office medical adviser reviewed medical evidence, addressed the asbestosis, pleural effusion and acute bronchitis, but noted that the employee's death was due to metastatic adenocarcinoma. He indicated that the accepted work-related conditions did not worsen, hasten or caused the employee's death. This report does not support appellant's claim of causal relationship with the employee's accepted asbestosis. The Office medical adviser found that the employee's adenocarcinoma was not related to the accepted history of asbestos exposure.

The hospital discharge summary noted as the cause of the employee's demise was liver cancer. It noted that asbestosis was a secondary diagnosis, but did not address the causal relationship of the asbestosis with the employee's death from carcinoma.

Appellant's submission of general materials discussing sequelae of asbestosis is of general application and therefore is not specific to the employee or probative to the issue in this case.

⁷ See *William C. Bush*, 40 ECAB 1064 (1989).

⁸ See *Barbara J. Williams*, 40 ECAB 649 (1989); *Lillian M. Jones*, 34 ECAB 379 (1982).

Appellant has failed to provide sufficient rationalized medical evidence that establish the accepted employment-related conditions of pulmonary asbestos and bronchitis as causative of his terminal malignant ampullary adenocarcinoma. She has therefore failed to establish her claim.

CONCLUSION

The Board finds that appellant has failed to meet her burden of proof to establish that the employee died of his accepted employment conditions of asbestosis and bronchitis.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 15 and July 15, 2004 are affirmed.

Issued: June 17, 2005
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member