

**United States Department of Labor
Employees' Compensation Appeals Board**

I.N., Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
INDIANAPOLIS VETERANS HOSPITAL,
Indianapolis, IN, Employer**

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**Docket No. 06-860
Issued: August 4, 2006**

Appearances:
I.N., pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge

JURISDICTION

On March 7, 2006 appellant filed a timely appeal from the January 9, 2006 merit decision of the Office of Workers' Compensation Programs' denying his claim for benefits. Under 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 sustained an injury in the performance of duty on July 1, 2004.

FACTUAL HISTORY

On August 3, 2004 appellant, then a 53-year-old pipe fitter, filed a claim alleging that on July 1, 2004 he was exposed to asbestos while involved in a demolition of a block and plaster wall. Appellant lost no time from work. The employing establishment indicated that all the rules, regulations and procedures were followed in the removal of the asbestos.

In a letter dated October 13, 2004, the Office informed appellant that the evidence was insufficient to support his claim as additional factual information was needed and there was no

medical evidence indicating that a diagnosis was made due to any asbestos exposure. The Office advised appellant of the type of medical and factual evidence required to support his claim and allowed him 30 days to provide the requested information.

The Office received a November 1, 2004 statement from appellant describing the incident and the techniques employed in the demolition. No medical evidence was submitted.

The employing establishment submitted various factual information, which indicated that appellant was involved in fixing a leaking water pipe repair operation in the 8 West Wing of the Indianapolis Veterans Administration Medical Center on July 1, 2004. The work activities included knocking down block wall plaster in the near proximity of a leaking water pipe surrounded by thermal insulation material, which contained more than one percent asbestos. Copies of correspondence regarding appellant's concerns of health and safety issues over the July 1, 2004 incident were submitted, which included a September 21, 2004 investigation and results of area monitoring using the negative glove-bag/wet methods.

By decision dated November 18, 2004, the Office denied appellant's claim on the basis that he failed to establish fact of injury. The Office explained that the evidence of file supported that the claimed event of asbestos exposure on July 1, 2004 had occurred but that appellant failed to submit medical evidence providing a diagnosis which could be related to the established event. The Office noted that appellant had been advised as to the deficiencies in his claim in a letter dated October 13, 2004, but that no medical evidence had been submitted.

Appellant requested reconsideration on November 14, 2005. Appellant submitted evidence previously of record, which included duplicative copies of his November 1, 2004 statement and his claim form, along with new evidence. Received were: appellant's statement dated November 14, 2005; statements dated January 31 and February 16, 2005 from Wendi Ratliff, an injury compensation specialist; a December 10, 2004 transcript of proceedings; a December 13, 2004 letter to appellant from Kenneth Gilbert, Area Director, which indicated that a December 10, 2004 Occupational Health and Safety Administration (OSHA) inspection of the employing establishment violated OSHA standards; a copy of OSHA's "Requirements for demolition operations involving material containing <one percent asbestos;" a statement dated December 6, 2004 from Charles Gray, a maintenance and operations general supervisor; and electronic mail exchanges between Mr. Gray and John Elliott, assistant chief of engineering services, dated October 26, 2004 and between Mr. Elliott and Mr. Gray dated February 14, 2005.

By decision dated January 9, 2006, the Office denied modification of its previous decision. The Office noted that, on July 1, 2004, appellant was required to channel the block from around the asbestos piping while wetting the material with a sprayer. Appellant was also required to guard the area to ensure that no unauthorized personnel entered the area during the asbestos abatement process. The Office found that although the preponderance of the evidence supported that the levels of asbestos around the area of the asbestos abatement performed on July 1, 2004 were well below the OSHA standards, appellant was exposed to minimal levels of asbestos, at .007 fibers per cubic centimeter. The Office, however, found that as appellant had not presented any medical evidence to support that he sustained a diagnosis in connection with his work exposure of July 1, 2004, he did not sustain an injury.

LEGAL PRECEDENT

The Federal Employees Compensation Act¹ provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.² The phrase sustained while in the performance of duty is regarded as the equivalent of the coverage formula commonly found in workers' compensation laws, namely, arising out of and in the course of employment.³

An employee seeking benefits under the Act has the burden of proof to establish 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 an 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 related to the employment injury.⁴ When an employee claims that he or she sustained a traumatic injury in the performance of duty, they must establish the fact of injury consisting of two components which must be considered in conjunction with one another. The first is whether the employee actually experienced the incident that is alleged to have occurred at the time, place and in the manner alleged. The second is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.⁵

The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.⁶ An award of compensation may not be based on appellant's belief of causal relationship.⁷ Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.⁸ Simple exposure to a workplace hazard does not constitute a work-related injury entitling an employee to medical treatment under the Act.⁹

¹ 5 U.S.C. §§ 8101 *et seq.*

² 5 U.S.C. § 8102(a).

³ This construction makes the statute effective in those situations generally recognized as properly within the scope of workers' compensation law. *Charles E. McAndrews*, 55 ECAB ____ (Docket No. 04-1257, issued September 10, 2004); *see also Bernard D. Blum*, 1 ECAB 1 (1947).

⁴ *Robert Broome*, 55 ECAB ____ (Docket No. 04-93, issued February 23, 2004).

⁵ *Deborah L. Beatty*, 54 ECAB 340 (2003). *See also Tracey P. Spillane*, 54 ECAB 608 (2003); *Betty J. Smith*, 54 ECAB 174 (2002). The term injury, as defined by the Act, refers to a disease proximately caused by the employment. 5 U.S.C. § 8101(5). *See* 20 C.F.R. § 10.5(q), (ee).

⁶ *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

⁷ *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

⁸ *Florencio D. Flores*, 55 ECAB ____ (Docket No. 04-942, issued July 12, 2004).

⁹ 20 C.F.R. § 10.303(a).

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion 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 established incident or factor of employment.¹⁰

ANALYSIS

The Office accepted that appellant was a federal employee, that he timely filed his claim for compensation benefits and that the workplace incident of exposure to minimal levels of asbestos had occurred as alleged. The issue, therefore, is whether he has submitted sufficient medical evidence to establish that the employment incident caused an injury. Although the Office had informed appellant of the necessity of submitting medical evidence in its October 13, 2004 letter, he submitted no medical evidence in support of his claim. For example, appellant did not submit a physician's report, which explained how and why appellant's level of asbestos exposure on the date in question caused or aggravated a specific diagnosed condition. Therefore, appellant failed to establish a *prima facie* claim for compensation.

An award of compensation may not be based on surmise, conjecture, speculation or upon appellant's own belief that there is a causal relationship between his claimed condition and his employment.¹¹ To establish causal relationship, he must submit a physician's report in which the physician reviews those factors of employment identified by him as causing his condition and, taking these factors into consideration as well as findings upon examination and appellant's medical history, explain how these employment factors caused or aggravated any diagnosed condition and present medical rationale in support of his opinion.¹² Appellant failed to submit such evidence and, therefore, failed to satisfy his burden of proof. The Board finds that the Office properly denied his claim for benefits under the Act.

¹⁰ *John W. Montoya*, 54 ECAB 306 (2003).

¹¹ *Patricia J. Glenn*, 53 ECAB 159 (2001).

¹² *Robert Broome*, *supra* note 4.

CONCLUSION

Appellant has not met his burden of proof to establish that he sustained an injury in the performance of duty on July 1, 2004.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 9, 2006 is affirmed.

Issued: August 4, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board