

FACTUAL HISTORY

On February 19, 2004 appellant, then a 51-year-old former supply clerk, filed a Form CA-2, occupational disease claim, alleging that he sustained a respiratory illness or asbestosis due to factors of his federal employment which manifested itself on January 8, 1987. He became aware of his condition on that day and first attributed it to his employment duties on July 9, 2003 when he received his employment records.² Appellant was terminated in a reduction-in-force effective July 6, 1992 because the base was closing.

In support of his claim, appellant submitted medical evidence including x-ray reports,³ a Republic of the Philippines Social Security medical certification report, dated July 29, 2003, which noted x-ray findings of densities in both lungs and diagnosed Koch's pulmonary, and a July 13, 2005 report which noted the x-ray findings of bilateral pleural thickening and appellant's symptoms of progressive difficulty breathing. Probable asbestos-related lung disease and restrictive lung disease were diagnosed.⁴

By letter dated June 22, 2005, the Office informed appellant that a March 10, 1982 agreement between the United States Government and the government of the Republic of the Philippines transferred coverage of injured Philippine nationals employed by the United States Government from coverage under the Act to the Philippine Social Security System. The Office noted that, as appellant continued to work until 1992, his injury would be covered by the Philippine Social Security System and requested that he submit a copy of his personal services contract which would show whether he was entitled to benefits under the Act. In a letter dated July 12, 2005, appellant provided information regarding his employment and medical histories. He alleged that he had been exposed to asbestos during his federal employment. The employing establishment submitted a personnel history and other employment information.

By decision dated October 12, 2005, the Office denied the claim on the grounds that it was not timely filed. On November 2, 2005 appellant requested a review of the written record. By decision dated February 10, 2006, an Office hearing representative set aside the October 12, 2005 decision, finding the claim timely filed. The case was remanded to the Office for further adjudication. In a decision dated February 22, 2006 and finalized March 16, 2006, the Office denied the claim, finding that appellant was not a civil employee of the United States. Appellant had exposure after September 10, 1982 and he did not show that he was not eligible for Philippine Social Security benefits.

² Appellant began work for the Department of the Navy at Subic Bay at the supply depot as a warehouseman on December 9, 1977. He transferred to the club in February 1983 where he worked as a supply clerk.

³ A January 8, 1987 x-ray demonstrated tuberculosis.

⁴ The signatures on the reports are illegible.

LEGAL PRECEDENT

On March 10, 1982 the United States entered into an agreement with the Republic of the Philippines.⁵ Effective that date, the agreement transferred coverage for employment injuries sustained by Philippine nationals employed by the United States from the Act to the Philippine Medical Care Program and the Philippine Employees' Compensation Program.⁶

Office procedures provide that Philippine nationals who sustain a traumatic injury on or after March 10, 1982 or who sustain an occupational disease due to work exposure of which at least a portion occurred on or after September 10, 1982 and are eligible for benefits under the Philippine system are not entitled to benefits under the Act. When a claim from a Philippine national who is covered under the local system is received for injury or occupational disease sustained outside of the time frames specified above, the claim should be denied with compensation order, and full appeal rights, on the basis that the claimant is not a civil employee of the United States for purposes of compensation coverage under the Act.⁷

ANALYSIS

Appellant attributed his respiratory illness to factors of his federal employment, stating that it became manifest on January 8, 1987 when he was employed as a supply clerk. The Office's procedure manual describes a 1982 agreement between the governments of the United States and the Republic of the Philippines.⁸ The procedure manual provides that Philippine nationals who sustain an occupational disease due to work exposure of which at least a portion occurred on or after September 10, 1982 who are eligible for Philippine benefits, are not entitled to benefits under the Act.⁹ While appellant began work for the United States in 1977, he continued employment until 1992 and based this claim on a 1987 illness. The record supports that at least a portion of the work exposure to which appellant attributed his occupational disease occurred after September 10, 1982. Appellant would therefore not be entitled to coverage under the Act unless he was ineligible for coverage under the Philippine Social Security System. By letter dated June 22, 2006, the Office informed appellant that he should submit supporting evidence to show that he was not entitled to Philippine benefits. He did not provide the requested information. Consequently, as appellant attributed part of his occupational disease to work exposure after September 10, 1982, and as he has not shown that he is not eligible for benefits under the Philippine system, he is not a civil employee for purposes of coverage under the Act.¹⁰

⁵ Agreement on Employees' Compensation and Medical Care Programs, March 10, 1982, United States -- Philippines, 34 U.S.T. 312, T.I.A.S. No. 10358; *see Gregorio Llagas*, 37 ECAB 116 (1985).

⁶ *Id.*

⁷ Federal (FECA) Procedure Manual, Part 4 -- Special Case Procedures, *Foreign National Claims*, Chapter 4.801.10(a)(1)-(3) (September 1994).

⁸ *Id.* at § 10(a).

⁹ *Id.* at § 10(a)(2).

¹⁰ *See Jose S. Lozano*, 56 ECAB ____ (Docket 05-1146, issued August 18, 2005).

CONCLUSION

The Board finds that appellant is not a civil employee of the United States for purposes of coverage under the Act.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 22, 2006 and finalized on March 16, 2006 be affirmed.

Issued: November 16, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board