

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

<p><b>P.P., Appellant</b></p> <p><b>and</b></p> <p><b>DEPARTMENT OF THE NAVY, NAVAL SHIP REPAIR FACILITY, Subic Bay, Republic of the Philippines, Employer</b></p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p><b>Docket No. 07-682</b> <b>Issued: June 20, 2007</b></p>
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*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On January 16, 2007 appellant filed a timely appeal from the November 28, 2006 decision of a hearing representative of the Office of Workers' Compensation Programs finding that he was not a civil employee of the United States for purposes of coverage under the Federal Employees' Compensation Act.<sup>1</sup> 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 is a civil employee of the United States for purposes of coverage under the Act. On appeal, he contends that he should be compensated for the disease caused by his pre 1982 asbestos exposure.

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

## **FACTUAL HISTORY**

On September 27, 2005 appellant, a 64-year-old retired pipe fitter foreman and Philippine national, filed an occupational disease claim, Form CA-2, alleging that he developed asbestos-related interstitial disease due to his exposure to asbestos materials in the course of his duties at the employing establishment. He became aware of his condition on September 26, 1993 and notified the employing establishment of his illness at that time.<sup>2</sup> The record reveals that appellant was employed by the employing establishment approximately from November 16, 1965 to his retirement on July 10, 1992.

Appellant submitted a November 3, 1993 report from Dr. Dina Diaz who found that appellant's forced vital capacity, forced expiratory volume and lung volumes had decreased and his diffusing capacity had mildly decreased. Dr. Diaz stated that x-rays revealed abnormal interstitial opacities in the mid and lower lungs that were consistent with asbestos-related interstitial fibrosis and mild pleural abnormalities on the left side consistent with asbestos-related pleural disease. She indicated that appellant had smoked approximately 20 cigarettes a day since he was 24 years old.<sup>3</sup> Appellant also submitted a certificate by Dr. Diaz indicating that he had been diagnosed with asbestosis and asbestos-related pleural disease based on his work exposure, chest x-ray and lung function.

The employing establishment submitted personnel and medical records covering appellant's employment from 1965 to his 1992 retirement, during which time he was employed as a pipe fitter helper, a pipe fitter and a pipe fitter foreman. The records included yearly medical evaluation reports and a variety of asbestos surveillance reports and diagnostic reports conducted by the employing establishment. These records indicated that appellant was exposed to asbestos both before and after 1982.

On May 5, 2006 the Office informed appellant that it appeared from his initial submission that he was not a civil employee for the purposes of the Act. It stated that, under a March 10, 1982 agreement, Philippine nationals who were hired by the U.S. Military Forces became covered by the Philippine Medical Care Program and the Employees' Compensation Program, rather than the Act. The Office informed appellant that his occupational disease claim based on work exposure of which at least a portion occurred on or after September 10, 1982 would not be covered under that Act if he was eligible for Philippine benefits. It provided him 30 days to submit evidence that his claim was proper. Appellant did not respond within the allotted time.

By decision dated June 7, 2006, the Office denied appellant's claim on the grounds that he had not established that he was a civil employee for purposes of the Act.

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<sup>2</sup> Appellant sent notice to an office of the employing establishment outside of the Philippines because the U.S. Naval Base at Subic Bay was closed in 1992.

<sup>3</sup> The Board notes that the report is internally inconsistent in the role of appellant's smoking habit on the condition of his lungs. In one section Dr. Diaz stated: "[Appellant] has exertional dyspnea and his lung function already shows a restrictive defect. Since he never smoked cigarettes, the defect cannot be attributable to a previous smoking habit."

On June 9, 2006 the Office received a May 18, 2006 letter from appellant in which he argued that he was entitled to compensation because he knew of another case in which a Philippine national was compensated under the Act for a condition that arose after 1984.

On June 17, 2006 appellant requested a review of the written record. He noted that the first signs of asbestosis can occur as many as 30 years after exposure, depending on the concentration of exposure. Appellant argued that the asbestosis diagnosis he received in 1993 was based on disease that was present prior to 1982.

By decision dated November 28, 2006, the Office hearing representative affirmed the June 7, 2005 decision. After reviewing the arguments in appellant's May 18 and June 17, 2006 letters, he found that appellant had not established that he was a civil employee covered by the Act. The Office hearing representative stated that each case was reviewed on its own merits and that the circumstances of another case did not alter the circumstances of appellant's claim. He found that appellant had presented no medical evidence to support his contention that he had asbestosis prior to 1982.

### **LEGAL PRECEDENT**

The Office's procedure manual provides:

“Under an agreement between the United States and the Republic of the Philippines signed on March 10, 1982, the Philippine Medical Care Program and the Employees' Compensation Program were extended to all Philippine national direct-hire employees of the U.S. Military Forces, except for those employees who are not members of the Philippine Social Security System.

“(1) Philippine nationals who sustain traumatic injury on or after March 10, 1982, and are eligible for benefits under the Philippine system are not entitled to Federal Employees' Compensation Act benefits.

“(2) Philippine nationals who sustain occupational disease due to work exposure of which at least a portion occurred on or after September 10, 1982, and who are eligible for Philippine benefits, are not entitled to the Act benefits.

“(3) Whenever 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.”<sup>4</sup>

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<sup>4</sup> Federal (FECA) Procedure Manual, Part 4 -- Special Case Procedures, *Philippine Nationals*, Chapter 4.801.10(a) (September 1994).

### ANALYSIS

Appellant filed an occupational disease claim alleging that his asbestosis which was diagnosed on September 26, 1993, was caused by asbestos exposure at the employing establishment. The record establishes that he was employed as a pipe fitter from 1965 to 1992 and that he was exposed to asbestos both before and after 1982.

The Office 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 and who are eligible for Philippine benefits, are not entitled to benefits under the Act.<sup>5</sup> The Board finds that, as a portion of appellant's exposure to asbestos occurred after September 10, 1982, he is not entitled to benefits under the Act unless he is ineligible for benefits under the Philippine Social Security System. When requested by the Office, appellant failed to submit any evidence that he was ineligible for Philippine benefits. The Board, therefore, finds that appellant has not established that he is a civil employee for purposes of coverage under the Act.

Appellant argued on appeal that he should be compensated for the disease that was caused by his pre 1982 asbestos exposure. The Board has consistently held that the date of injury in occupational disease claims, where exposure continues over a period of time, is the date of the employee's last exposure to the employment factors which are implicated in causing the disease.<sup>6</sup> The Board has affirmed this doctrine in connection with other cases involving the 1982 agreement.<sup>7</sup> Appellant's employment commenced with the employing establishment in 1965 and his last exposure to the implicated employment factors was July 10, 1992 which was also the effective date of his retirement. Because the record establishes that he was exposed to asbestos after September 10, 1982 and because he has not presented any evidence that he is ineligible for Philippine benefits, the Board finds that appellant cannot be compensated for his earlier exposure under the Act.

### CONCLUSION

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

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<sup>5</sup> *Id.*

<sup>6</sup> *Rustico Rimando*, 37 ECAB 745 (1986).

<sup>7</sup> *Jose S. Lozano*, 56 ECAB \_\_\_\_ (Docket No. 05-1146, issued August 18, 2005); *Gregorio Llagas*, 37 ECAB 116 (1985).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated November 28, 2006 is affirmed.

Issued: June 20, 2007  
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