

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

_____)
P.S., claiming as personal representative of the)
estate of A.S., Appellant)
))
and)
))
DEPARTMENT OF LABOR, MINE SAFETY &)
HEALTH ADMINISTRATION, Denver, CO,)
Employer)
_____)

Docket No. 07-1922
Issued: June 19, 2008

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On July 13, 2007 appellant filed a timely appeal from an April 5, 2007 decision of the Office of Workers' Compensation Programs, denying compensation for death benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether the employee's pulmonary fibrosis and his death on July 21, 2005 were causally related to factors of his federal employment.

FACTUAL HISTORY

On July 18, 2005 the employee, then a 75-year-old retired mine safety and health inspector, filed an occupational disease claim for pulmonary fibrosis.¹ He indicated that in

¹ Appellant retired in October 1992.

April 1988 he first became aware of his condition and that it was caused or aggravated by his occupational exposure to dust and other airborne particles in mines and mills.²

In a July 19, 2005 report, Dr. Amitab Puri, an attending Board-certified pulmonologist, stated that the employee had disseminated prostate cancer and what appeared to be interstitial lung disease or pulmonary scarring, also known as pulmonary fibrosis.³

In an August 11, 2005 letter, the Office requested a comprehensive medical report explaining the relationship of the employee's pulmonary fibrosis condition to his federal employment.

By letter dated September 8, 2005, appellant, the employee's wife, advised that he had passed away. A state death certificate dated August 16, 2005 indicated that the employee's death on July 21, 2005 was caused by prostate cancer which was due to pulmonary interstitial fibrosis as a consequence of "miner's lung."

A March 9, 1977 pulmonary function test for the employee was reported as normal. A report of a July 21, 1986 medical examination for the employing establishment indicated no pulmonary problems.

In an October 21, 2005 report, Dr. Richard K. Rosenberg, an attending oncologist, noted that he treated the employee for metastatic prostate cancer from January 26 to July 21, 2005. He stated:

"[The employee] developed respiratory difficulties that prevented him from receiving appropriate treatment for his prostate cancer. The first sign of his respiratory difficulty came to my attention on April 8, 2005 when he complained of shortness of breath. [The employee's] dyspnea [shortness of breath] worsened to the point that I referred him to a pulmonologist, Dr. Amitab Puri, on May 23, 2005. Dr. Puri ultimately concluded that [the employee] had pulmonary fibrosis and nonspecific alveolitis [inflammation of lung alveoli]."

By decision dated January 31, 2006, the Office denied appellant's claim on the grounds that the evidence failed to establish that the employee's pulmonary fibrosis and death were causally related to factors of his employment.

On January 16, 2007 appellant requested reconsideration and submitted additional evidence. May 18 and 23, 2005 progress notes from Dr. Rosenberg contained diagnoses of prostate cancer and "dyspnea/asthma/COPD (chronic obstructive pulmonary disease)." A June 24, 2005 radiology report indicated findings most compatible with moderately severe pulmonary fibrosis. A June 27, 2005 hospital discharge summary from Dr. Michael R. Jerman noted diagnoses of atherosclerotic coronary artery disease, chronic atrial fibrillation, metastatic prostate carcinoma, anemia, pulmonary fibrosis complicated by nonspecific alveolitis, a urinary

² The Office accepted that the employee was exposed to mine dust during his federal employment.

³ Pulmonary fibrosis is the formation of fibrous tissue and the chronic inflammation of the pulmonary alveolar walls. See DORLAND'S, *Illustrated Medical Dictionary* (30th ed. 2003) 698.

tract infection, history of dyslipidemia and a history of mild aortic stenosis and regurgitation. In a July 6, 2005 report (hospital physical assessment), Dr. Rosenberg diagnosed prostate cancer and dyspnea.

By decision dated April 5, 2007, the Office denied modification of the January 31, 2006 decision.

LEGAL PRECEDENT

Appellant has the burden of proving by the weight of the reliable, probative and substantial evidence that the employee's pulmonary fibrosis and death was causally related his federal employment. This burden includes the necessity of furnishing medical opinion evidence of a cause and effect relationship based on a proper factual and medical background.⁴

The medical evidence required to establish a causal relationship, generally, is rationalized medical evidence.⁵ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's condition and the implicated employment factors. The opinion of the physician 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 specific employment factors identified by the claimant.⁶

ANALYSIS

A June 24, 2005 radiology report indicated findings compatible with moderately severe pulmonary fibrosis but did not address the issue of causal relationship. A June 27, 2005 hospital discharge summary report from Dr. Jerman noted numerous diagnoses, including metastatic prostate carcinoma and pulmonary fibrosis complicated by nonspecific alveolitis. However, Dr. Jerman did not address the cause of these conditions. Because the radiology report and hospital discharge report did not contain a work history and a rationalized medical opinion as to the cause of the employee's pulmonary fibrosis, they are not sufficient to establish that his pulmonary fibrosis and death were causally related to factors of his federal employment.

In a July 19, 2005 report, Dr. Puri stated that the employee had disseminated prostate cancer and what appeared to be interstitial lung disease or pulmonary scarring, also known as pulmonary fibrosis. He did not provide any history of employment factors as being a cause of the pulmonary fibrosis or address the issue of whether the lung condition was related by direct cause or aggravation. Because this report is lacking a complete and accurate factual and medical history and a rationalized opinion regarding causal relationship, it is not sufficient to establish that the employee's pulmonary fibrosis and death were causally related to his employment.

⁴ *Viola Stanko (Charles Stanko)*, 56 ECAB 436 (2005); *Kathy Marshall (Dennis Marshall)*, 45 ECAB 827 (1994).

⁵ *Michael S. Mina*, 57 ECAB 379 (2006).

⁶ *Gary J. Watling*, 52 ECAB 278 (2001); *Gloria J. McPherson*, 51 ECAB 441 (2000).

The May 18 and 23, 2005 progress notes and July 6, 2005 hospital assessment from Dr. Rosenberg contained diagnoses of prostate cancer and “dyspnea/asthma/COPD.” In an October 21, 2005 report, Dr. Rosenberg stated that he treated the employee for metastatic prostate cancer from January 26 to July 21, 2005. He stated that the employee developed respiratory difficulties that prevented him from receiving appropriate treatment for his prostate cancer and he referred him to a pulmonologist, Dr. Puri. However, Dr. Rosenberg did not include a work history or discuss the cause of the employee’s respiratory problems in his progress notes and report. Therefore, this evidence is not sufficient to establish that the employee’s pulmonary fibrosis and death were causally related to factors of his employment.

CONCLUSION

The Board finds that appellant failed to meet her burden of proof in establishing that the employee’s pulmonary fibrosis and death were causally related to factors of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers’ Compensation Programs dated April 5, 2007 is affirmed.

Issued: June 19, 2008
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees’ Compensation Appeals Board

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