United States Department of Labor
Employees' Compensation Appeals Board

E.M., (claiming as Executrix of the estate of H.M., Appellant	)	
and	)	**Docket No. 08-1175**
TENNESSEE VALLEY AUTHORITY, PARADISE FOSSIL PLANT, Drakesboro, KY, Employer	)	**Issued: March 12, 2009**

Appearances:
Ronald K. Bruce, Esq., for the appellant
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 March 12, 2008 appellant, through counsel, filed a timely appeal of the Office of Workers' Compensation Programs' merit decisions dated April 20, 2007 and January 15, 2008, finding that the employee did not sustain an injury while in the performance of duty. 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 has established that the employee sustained an injury while in the performance of duty.

FACTUAL HISTORY

On August 16, 2005 the employee, then a 78-year-old retired machinist, filed an occupational disease claim alleging that on May 19, 2005 he became aware of his pneumoconiosis after Dr. William C. Houser, an attending Board-certified pulmonary disease specialist, reviewed a chest x-ray. He realized that his condition was caused by his federal

employment. The employing establishment stated that appellant was last exposed to any alleged working conditions on December 18, 1980.

By letter dated July 12, 2006, the Office advised the employee that the evidence submitted was insufficient to establish his claim. It addressed the additional factual and medical evidence he needed to submit including, a rationalized medical report from an attending physician which described his symptoms, results of examination and tests, diagnosis, treatment provided, the effect of treatment and opinion with medical reasons on whether exposure or incidents in his federal employment contributed to his condition. The Office also requested that the employing establishment respond to the employee's claim, provide exposure data including, air sample surveys or statements of asbestos exposure, frequency, degree and duration for each job held, the employee's last exposure to asbestos, pertinent dispensary records and safety regulations and protective devices used by the employee with the period and frequency of use.

In an undated statement, the employee related that he began working at the employing establishment's Shawnee Steam Plant in 1965 as a laborer. He worked in this position for six months and was exposed to dust while sanding a turbine. The employee subsequently worked at the Paradise Steam Plant as a machinist until 1979. In this position, he handled coal on a daily basis except for two months. The employee coughed up and blew dust out of his nose. Dust was on his skin and clothing daily. The employee occasionally wore a mask. He could see dust on equipment and in the air. The employee was exposed to asbestos for one month when it was being torn off the pipes in his work area. He worked five to seven days per week, eight or more hours per day. The employee's employment history included exposure to coal and rock dust while driving a truck, five days per week, eight hours per day, for coal and trucking companies. He did not wear a mask while performing his work duties at these companies. The employee also worked on a farm where he was exposed to dust from dirt. He experienced breathing problems for approximately 25 to 30 years and suffered from a cough and shortness of breath that gradually worsened over time. The employee smoked 1½ to 2 packs of cigarettes per day for 45 to 50 years. He stopped smoking approximately 10 to 15 years ago. The employee developed pneumonia twice in the last year for which he was hospitalized.

In a July 12, 2005 medical report, Dr. Houser noted the employee's breathing problems and use of home oxygen. He reviewed appellant's medical, smoking, family and work history. On physical examination, Dr. Houser reported essentially normal findings with the exception of diminished breath sounds and heart tones. He stated that pulmonary function studies revealed moderate restrictive and obstructive ventilatory impairment. Dr. Houser related that the restrictive changes were most likely secondary to pneumoconiosis, noting that obesity could be a contributing factor. He further noted P-type opacities in all lung zones and Category 1/1 pneumoconiosis. Dr. Houser diagnosed Category 1 coal workers' pneumoconiosis, chronic bronchitis and moderately severe chronic obstructive pulmonary disease (COPD). He opined that the employee's Category 1/1 coal workers' pneumoconiosis was based on sufficient occupational exposure to coal and rock dust, asbestos and welding fumes for approximately 20 years, and chest x-ray findings. Dr. Houser further opined that the employee's COPD and bronchitis were secondary to cigarette smoking and exposure to respirable dust including, coal and rock dust, asbestos and welding fumes. He restricted the employee from additional exposure to these elements due to the diagnosed conditions. Dr. Houser found that he was physically unable to perform his machinist duties.

By letter dated November 8, 2006, the employing establishment contended that the medical evidence failed to establish that the employee's pneumoconiosis was caused by his federal employment. It stated that he was not exposed to asbestos in the workplace or in a monitoring program. The employing establishment submitted the employee's employment and medical records, noting his coal and lime dust and glue gas exposure from 1964 to 1977 and coal dust exposure outside the employing establishment from 1959 to 1961. The medical records, dated May 3, 1976 through August 18, 1980, noted a history of pleurisy in 1968, wheezing and emphysema in 1977, cigarette smoking which consisted of 1½ to 2½ packs per day and a chronic cough with mucus production.

On January 17, 2007 the Office referred the employee, together with a statement of accepted facts, the case record and a list of questions to be addressed, to Dr. Kenneth C. Anderson, a Board-certified pulmonary disease specialist, for a second opinion medical examination. By letters dated January 23 and 30, 2007, Dr. W. Kelly Vincent, an attending Board-certified family practitioner, and the employee's attorney, each advised the Office that the employee was bedridden and receiving hospice care. The employee died on March 8, 2007.

By letter dated March 22, 2007, the Office requested that Dr. Isabella K. Sharpe, a Board-certified internist, review the employee's medical records and statement of accepted facts and provide a second medical opinion.

In a March 26, 2007 report, Dr. Sharpe reviewed the employee's medical records and his history of occupational exposure to asbestos and coal dust and cigarette smoking. She stated that Dr. Houser was not a B-reader and the roentgenographic interpretation film was not the best quality. Dr. Sharpe noted that the profusion of small round P-type opacities was 1/1, the minimum for diagnosis on an ideal film. The employee had bronchitis which complicated the reading. Dr. Sharpe advised that the 2006 pulmonary function study included curves and was an excellent example of partially reversible obstruction typical of bronchospastic chronic bronchitis. She opined that the employee sustained spastic chronic bronchitis. Dr. Sharpe stated that he may have had pulmonary emphysema but it could not be formally diagnosed with the given records. There were incidental small round opacities with minimal profusion which had no clinical significance. Dr. Sharpe stated that the employee's lung disease could be fully explained by his smoking history which continued long after he left the employing establishment. She concluded that his lung disease was not work related.

By decision dated April 20, 2007, the Office denied the employee's claim, finding that the evidence failed to establish that he sustained a lung condition causally related to his employment-related coal dust exposure.

On April 17, 2007 appellant submitted a copy of the employee's death certificate which was signed by Dr. Vincent. He stated that the cause of death was COPD.

By letter dated April 26, 2007, appellant, through counsel, requested an oral hearing before an Office hearing representative regarding the April 20, 2007 decision.

In a November 16, 2007 report, Dr. Vincent stated that the employee suffered from COPD and had a history of pneumoconiosis. He opined that the employee's COPD was due to a combination of his tobacco usage and coal dust exposure over a prolonged period of years.

By decision dated January 15, 2008, an Office hearing representative affirmed the April 20, 2007 decision. The hearing representative accorded determinative weight to Dr. Sharpe's March 26, 2007 report in finding that the employee did not sustain a pulmonary condition causally related to his federal employment.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of his 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.[2] These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[3]

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. 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 diagnosed 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.[4] Neither the fact that the employee's condition became apparent during a period of employment nor his belief that the condition was caused by his employment is sufficient to establish a causal relationship.[5]

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[1] 5 U.S.C. §§ 8101-8193.

[2] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[3] *See Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

[4] *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

[5] *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

ANALYSIS

The Board finds that appellant has failed to establish a causal relationship between the employee's pulmonary conditions and his accepted employment-related coal dust exposure.

The employing establishment's medical records revealed a history of the employee's pleurisy in 1968, wheezing and emphysema in 1977, cigarette smoking which consisted of 1½ to 2½ packs per day and chronic cough with mucus production. This evidence, however, failed to address whether the noted pulmonary conditions were causally related to the accepted employment-related exposure to coal dust.[6] Therefore, the records from the employing establishment are not probative of the issue on appeal.

Dr. Houser's July 12, 2005 report stated that the employee sustained a moderate restrictive and obstructive ventilatory impairment based on pulmonary function studies. He opined that the employee's coal workers' pneumoconiosis was based on sufficient occupational exposure to coal and rock dust, asbestos and welding fumes for approximately 20 years and chest x-ray findings. Dr. Houser advised that his COPD and chronic bronchitis were secondary to cigarette smoking and exposure to respirable dust including, coal and rock dust, asbestos and welding fumes. Dr. Vincent's November 16, 2007 report stated that the employee's COPD was due to a combination of his tobacco usage and coal dust exposure over a prolonged period of years. However, neither Dr. Houser nor Dr. Vincent provided medical rationale explaining how the accepted employment exposures caused the diagnosed conditions. The Board has held that a medical opinion not supported by medical rationale is of little probative value.[7] The Board finds that Dr. Houser's and Dr. Vincent's reports are insufficient to establish appellant's burden of proof.

Dr. Sharpe, an Office referral physician, opined that the employee's lung disease was not work related. She reviewed his medical records and stated that Dr. Houser was not qualified as a B-reader and the roentgenographic interpretation film was not the best quality. Dr. Sharpe further stated that the profusion of small round P-type opacities was 1/1, the minimum for diagnosis on an ideal film. She related that the employee suffered from bronchitis which complicated the reading. Dr. Sharpe also related that the 2006 pulmonary function study included curves and was an excellent example of partially reversible obstruction typical of bronchospastic chronic bronchitis. She diagnosed spastic chronic bronchitis. Dr. Sharpe indicated that the employee may have suffered pulmonary emphysema but it could not be formally diagnosed with the given data. She explained that the incidental small round opacities with minimal profusion had no clinical significance. Dr. Sharpe stated that the employee's smokers' lung disease could be fully explained by his smoking history which continued long after he left the employing establishment.

The Board finds that Dr. Sharpe's opinion is sufficiently well rationalized and based upon a proper factual background such that it is the weight of the evidence on the issue of whether the

[6] *See Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

[7] *Caroline Thomas*, 51 ECAB 451 (2000).

employee sustained a lung condition causally related to his federal employment. The Board has noted that in assessing medical evidence the weight of such evidence is determined by its reliability, its probative value and its convincing quality and the factors which enter in such an evaluation include the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.[8] The Board has carefully reviewed Dr. Sharpe's March 26, 2007 report and notes that it has such reliability, probative value and convincing quality. Prior to reaching her conclusions, Dr. Sharpe extensively detailed the employee's factual and medical history and reported the findings based on her review of the employee's medical records. Although the employee predeceased Dr. Sharpe's medical evaluation, she had the benefit of a statement of accepted facts which delineated his employment-related coal dust exposure and smoking history. Moreover, she provided a proper analysis of the factual and medical history and objective test findings of record, and reached conclusions regarding the employee's condition which comported with this analysis.

The Board finds that appellant has not submitted rationalized medical evidence establishing that the employee's claimed lung conditions were causally related to his coal dust exposure. Appellant did not meet her burden of proof.

CONCLUSION

The Board finds that appellant has failed to establish that the employee sustained an injury while in the performance of duty.

[8] *See Melvina Jackson*, 38 ECAB 443, 449-50 (1987); *Naomi Lilly*, 10 ECAB 560, 573 (1959).

ORDER

IT IS HEREBY ORDERED THAT the January 15, 2008 decision of the Office of Workers' Compensation Programs' hearing representative and the April 20, 2007 decision of the Office are affirmed.

Issued: March 12, 2009
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