



for death benefits. The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference.

Appellant's representative submitted medical records for a hospital admission from November 14 to 19, 2002, in which the employee presented with left leg pain and was diagnosed with a left femur fracture. Dr. Burton Stodghill, a Board-certified orthopedic surgeon, noted the employee underwent a repair of the left femur fracture on November 14, 2002 and opined that the fracture was possibly secondary to metastatic renal cell cancer. He advised that the employee's history was significant for a left nephrectomy in August 2000 for renal cell cancer. Dr. Stodghill stated that a November 16, 2002 computerized tomography scan of the chest showed left pleural effusion with left lower lobe atelectasis. On November 20, 2002 the employee underwent a thoracentesis, which revealed no malignancy or reactive mesothelial cells. Dr. Stodghill diagnosed left femoral fracture, bibasilar atelectasis, left pleural effusion, left nephrectomy in August 2000 secondary to cancer, hypertension and renal insufficiency. On January 2, 2003 the employee was hospitalized for progressive weakness with metastatic renal cell carcinoma with anemia and hypercalcemia. He was treated by Dr. Harry W. Carloss, a Board-certified internist, who noted the employee's history and advised that he also had a pulmonary mass with pleural effusions. Pathology reports were negative for malignancy. Dr. Carloss diagnosed metastatic renal cell carcinoma, anemia, renal insufficient and hypercalcemia from tumor and discharged the employee on January 10, 2003. The employee died on April 6, 2003.

In a July 24, 2008 decision, the Office found that the employee's ex-wife was not an eligible beneficiary under the Federal Employees' Compensation Act and could not file a claim on behalf of the employee.<sup>2</sup> Thereafter, on August 18, 2008, appellant, the employee's son, filed a claim for compensation by widow, widower and/or children alleging that the employee, a deceased technical services supervisor, developed renal cell cancer with metastasis while performing his work duties, which included working with and around asbestos at the employing establishment. The employee was first aware of his disease on August 15, 1999. He had been terminated from employment due to a reduction-in-force on November 15, 1996. Appellant's representative submitted a death certificate indicating that the employee's cause of death was renal cell carcinoma and metastasis with other contributing conditions of small bowel obstruction and pneumonia.

In an August 20, 2008 statement, appellant's representative referenced the Board's July 18, 2008 decision and asserted that the claim for compensation was timely filed and established that the employee developed a medical condition in the performance of duty which resulted in his death. Appellant's representative referenced an undated statement from a

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<sup>2</sup> In the prior appeal, the Board noted that the employee's surviving nondependent children authorized their mother, the employee's ex-wife, to represent them in the matter before the Office.

supervisor who confirmed that the employee worked in areas containing asbestos when he was classified as a first period student and as a materials tester.<sup>3</sup>

In a letter dated December 5, 2008, the Office requested the employing establishment submit a statement from the employee's supervisor providing the employees job titles, employment duties, inclusive dates of employment and exposure to carcinogens while employed.

The employing establishment submitted the employee's October 26, 1983 and October 29, 1984 job applications and a job history summary. It provided a job description for a public safety officer with duties that included receiving visitors and protecting employing establishment property. The job description for a materials tester included testing on samplings of coal, limestone, fuel oil, measuring and displacement of coal on the barges and inspection of the quality of coal. The employing establishment submitted a January 5, 2009 electronic mail from James M. Bradford, safety consultant and industrial hygienist, who noted that there was no exposure data on public safety officers or materials testers because those positions did not work around contaminants in their job function. Mr. Bradford specifically noted that public safety officers worked in a plant environment and were not exposed to asbestos or other contaminants. He advised that materials testers worked in a lab environment and were not exposed to asbestos or coal dust.

The employing establishment submitted a January 26, 2009 statement from James R. Hubbard, a safety consultant, who noted the employee worked as a public safety officer, materials tester and as a student generating plant operator from January 7, 1985 to November 15, 1996 prior to being assigned to a workforce reinvestment group beginning July 24, 1995 until his termination on November 15, 1996. Mr. Hubbard advised that neither the position of public safety officer or materials tester placed the employee in an area where asbestos was present as the work areas were outside of the powerhouse. When the employee was in the student generating plant operator training program he was in a classroom environment. Mr. Hubbard further noted that the work performed by the employees assigned to the workforce services/synterprise group was administrative in nature and rarely required him to enter areas where asbestos existed. In a January 29, 2009 statement, Amanda England, a claims manager for the employing establishment, submitted an industrial hygiene report prepared by Alliant Corp dated December 22, 2008, which described general cause and effect of exposure to asbestos and coal dust.

In a decision dated September 16, 2009, the Office denied appellant's claim finding that he did not establish that the employee's death was causally related to his federal employment. It found that evidence did not support the level of exposure asserted by appellant and that it was not established that any workplace exposure caused the employee's death

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<sup>3</sup> The employing establishment submitted an undated, unsigned supervisor's statement noting that the employee was hired on January 17, 1985 and in 1995 worked in the employer's "synterprise group" for about one year before being terminated in a 1996 reduction-in-force. The person noted the employee's duties were unclear in synterprise group but he was exposed to asbestos insulation which was present in the employing establishment, for up to two hours daily. The employee worked in the areas of the plant containing asbestos for the first few months that he was classified in the student generating plant operator training program and subsequently as a materials tester. The person noted that the industrial hygiene data indicated that asbestos exposure was well within the permissible levels and the employee was provided with a respirator, safety glasses, a hard hat and hearing protection.

## LEGAL PRECEDENT

The Act provides that the United States shall pay compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.<sup>4</sup>

Appellant has the burden of proving by the weight of the reliable, probative and substantial evidence that the employee's death was causally related to his employment. This burden includes the necessity of furnishing rationalized medical opinion evidence of a cause and effect relationship, based on a complete factual and medical background, showing causal relationship. The opinion of the physician must be one of reasonable medical certainty and must be supported by medical rationale.<sup>5</sup> However, an award of compensation in a survivors claim may not be based on surmise, conjecture or speculation or on appellant's belief that the employee's death was caused, precipitated or aggravated by his employment.<sup>6</sup>

## ANALYSIS

The Board finds that appellant has not established that the employee's death was caused by his federal employment.

Appellant claimed that the employee's death on April 6, 2003 from renal cell cancer was causally related to his occupational exposure to hazardous chemicals at work. He did not submit sufficient evidence to establish that the employee was exposed to particular substances at work. The record does not support the employee's exposure of contaminants while performing his job functions. From January 7, 1985 to November 15, 1996 the employee worked as a public safety officer and a materials tester which included testing samplings of coal, limestone, fuel oil, performing measuring and displacement of coal on barges. In a January 5, 2009 statement, Mr. Bradford, a safety consultant and industrial hygienist, noted that there was no exposure data on public safety officers or materials testers because they did not work around contaminants in their job function. He noted that public safety officers worked in a plant and had no exposure to contaminants and material testers worked in a laboratory and were not exposed to asbestos or coal dust. In a January 26, 2009 statement, Mr. Hubbard, a safety consultant, advised that neither the position of public safety officer nor materials tester placed the employee in an area where asbestos was present. Further, when the employee was in the student generating plant operator training program, he was in a classroom environment. Mr. Hubbard noted that the work performed by the employees assigned to the workforce services/synterprise group was administrative in nature and rarely required the employee to enter areas where asbestos existed at the employing establishment.

The weight of the factual evidence therefore does not support exposure to measurable levels of coal dust or asbestos. Mr. Hubbard's statement indicates that the employee may have had rare exposure to contaminants and Mr. Bradford noted that there was no exposure data for

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<sup>4</sup> 5 U.S.C. § 8133.

<sup>5</sup> *L.R. (E.R.)*, 58 ECAB 369 (2007).

<sup>6</sup> *Jimmy Zenny (Ingrid Hall Zenny)*, 54 ECAB 577 (2003).

the employee's jobs as persons in such jobs were not exposed to asbestos or coal dust. The factual evidence does not substantiate that the employee was exposed to measurable amounts of particular chemicals or contaminants.<sup>7</sup>

The Board further finds that appellant did not submit rationalized medical evidence based on an accurate history supporting that any established work factors or exposures caused or contributed to the employee's death. Reports from Dr. Stodghill dated November 14 to 19, 2002, noted the employee's medical history and treatment but did not specifically address whether any particular employment factors or exposures caused or contributed to the employee's metastatic renal cell cancer or other diagnosed conditions that led to the employee's death. As Dr. Stodghill did not address whether the employee's work contributed to conditions that led to his death, his reports are of limited probative value.<sup>8</sup> Similarly, on January 2, 2003, Dr. Carloss noted treating the employee for progressive weakness with metastatic renal cell carcinoma and other conditions but he did not specifically address whether the employee's employment activities had caused or aggravated the diagnosed medical conditions.

The other medical reports of record similarly do not specifically address how established employment factors or exposures caused or contributed to a diagnosed medical condition that contributed to the employee's death. The death certificate, signed by a physician on April 29, 2003, listed the cause of death as renal cell carcinoma and metastasis. This does not establish that the renal cell carcinoma was caused or contributed to by the employee's exposure to any workplace substance.

Appellant has the burden to prove that the employee's death on April 6, 2003 was causally related to his employment. It is not enough for him to express his belief that the employee's death was caused by hazardous exposure to contaminants at work. Causal relationship is a medical issue and must be addressed by a qualified physician. Appellant must submit to the Office a medical report from a physician who provides an accurate history of the employee's employment exposure, that correctly addresses the cause of death on April 6, 2003 and that explains, with sound medical reasoning, how one led to the other. The physician's medical explanation is critical and must show that his or her conclusion is sound and logical. Such rationalized medical opinion evidence is absolutely necessary for appellant to establish the element of causal relationship.

In the absence of a well-reasoned medical opinion soundly explaining how the employee's death resulted from his employment, the Board must find that appellant has not met his burden of proof. The Board will therefore affirm the Office decision dated September 16, 2009 denying his claim for compensation benefits.

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<sup>7</sup> An undated and unsigned supervisor's statement indicated that the employee had asbestos exposure within permissible levels during a limited time. The Board notes that this statement, lacking proper identification of its author is of no probative value. *F.B.*, Docket No. 08-2489 (issued June 22, 2009) (documents lacking proper identification are of no probative value); *see D.D.*, 57 ECAB 734 (2006); *Merton J. Sills*, 39 ECAB 572 (1988).

<sup>8</sup> *A.D.*, 58 ECAB 149 (2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

On appeal, appellant through his representative asserts that the undated and unsigned statement from the employee's supervisor substantiates that the employee was exposed to asbestos insulation while working as it was present throughout the employing establishment. As noted above, this evidence is insufficient to establish exposure to hazardous carcinogens as it is undated and unsigned. The employing establishment submitted statements from Mr. Bradley and Mr. Hubbard, safety consultants and industrial hygienists, who confirmed that the employee's job duties involved only rare exposure to any contaminants. Furthermore, there is no medical evidence explaining how such rare exposure would have caused or contributed to the employee's death.

**CONCLUSION**

The Board finds that appellant did not meet his burden of proof to establish that the employee's death on April 6, 2003 was causally related to his employment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 16, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 3, 2011  
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