



Appellant's examination was negative. A January 17, 2000 chest x-ray showed no evidence of tuberculosis. Noting a positive skin test, Dr. Palmer recommended a yearly chest x-ray.

The Office accepted appellant's claim for exposure to tuberculosis.

Chest x-rays on January 15 and June 4, 2003 were normal, as were chest x-rays on January 15, 2004. A February 24, 2006 chest x-ray showed no evidence of acute pulmonary pathology.

In 2010 the Office received a request to authorize another chest x-ray.

In a decision dated July 15, 2010, the Office denied the request. It noted that the file did not support that appellant had anything beyond an exposure to tuberculosis. Regular diagnostic tests continued to be negative for any pulmonary diagnosis. As the risk for developing active disease was highest in the first two years after exposure and a positive skin test, and as it had been more than 10 years since appellant's exposure with no diagnosis of tuberculosis, the Office found that he had no ongoing need for medical treatment for the accepted condition, "which was simple exposure and which never developed into tuberculosis." It closed appellant's case.

On appeal, appellant argues that the Office overrode Dr. Palmer's recommendation and closed his case without medical input.

### **LEGAL PRECEDENT**

The United States shall furnish to an employee who is injured while in the performance of duty the services, appliances and supplies prescribed or recommended by a qualified physician that the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of any disability or aid in lessening the amount of any monthly compensation.<sup>2</sup> The Office must therefore exercise discretion in determining whether the particular service, appliance or supply is likely to effect the purposes specified in the Act.<sup>3</sup> The only limitation on the Office's authority is that of reasonableness.<sup>4</sup>

### **ANALYSIS**

The Office denied authorization for another chest x-ray on the grounds that the risk for developing active disease is the highest in the first two years after exposure and development of a positive skin test, and that it had been 10 years in appellant's case without a diagnosis of tuberculosis. It, however, did not identify the source of this information. The issue is a medical one, and it does not appear that the Office sought the advice of its district medical adviser. Appellant's family physician, Dr. Palmer, recommended a yearly chest x-ray. The Board finds,

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<sup>2</sup> *Id.* at § 8103(a).

<sup>3</sup> See *Marjorie S. Geer*, 39 ECAB 1099 (1988) (the Office has broad discretionary authority in the administration of the Act and must exercise that discretion to achieve the objectives of section 8103).

<sup>4</sup> *Daniel J. Perea*, 42 ECAB 214 (1990).

as appellant argues on appeal, that it was unreasonable for the Office to deny authorization for an annual chest x-ray in the absence of medical opinion to the contrary.

The Board will set aside the July 15, 2010 decision and remand the case for further development of the medical opinion evidence and a proper exercise of discretion under section 8103 of the Act. After such further development as may be necessary, the Office shall issue an appropriate final decision on whether to authorize another chest x-ray for appellant's accepted exposure to tuberculosis.

**CONCLUSION**

The Board finds that this case is not in posture for decision. Further development of the medical opinion evidence is warranted.

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 15, 2010 decision of the Office of Workers' Compensation Programs is set aside. The case is remanded for further action consistent with this opinion.

Issued: May 19, 2011  
Washington, DC

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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