



bronchitis due to exposures during his federal employment. He first became aware of his condition on February 14, 2013 and first realized that his condition was caused or aggravated by his employment on February 14, 2013.

The employing establishment submitted a statement dated June 18, 2013 noting that appellant was federally employed as a pan scraper and a boilermaker for 1.6 years. Appellant performed federal employment from March 29 to November 30, 1977; from August 10, 1978 through March 16, 1979 and from September 16, 1981 through January 28, 1982. The employing establishment noted that he spent most of his 35-year working career at various plants through the boilermakers union. It stated that from 1978 to 1982 respirable coal dust, total dust, and asbestos were below relevant permissible exposure limits established by the Occupational Safety and Health Administration (OSHA). The employing establishment stated that appellant's position as a boilermaker did not require him to abate or repair any asbestos insulation while he was employed there.

In a letter dated June 21, 2013, OWCP requested additional factual and medical evidence from appellant. It allowed 30 days for a response. Appellant submitted a narrative statement asserting that he began working for the employing establishment as a crane operator from March through November 1977. He stated that he was exposed to welding smoke, fumes, and dust on a daily basis during this period. Appellant then worked at the employing establishment as a boilermaker from August 7, 1978 to March 16, 1979 and from September 15, 1981 through January 27, 1982. He stated that he was exposed to coal dust, welding smoke, fumes, and dust on a daily basis. Appellant stated that he had exposure to asbestos from gaskets, boilers, and steam pipes as well as from the use of an asbestos blanket to cover his head and shoulders or lap or to lie upon. He stated that dust was visible in the air and on all of the equipment, his skin, and his clothing. Appellant stated that, after 1977, he worked for contractors at various employing establishment plants as well as other employment with similar exposures. He submitted a copy of his work history with the boilermakers union from 2000 through August 2012.

Dr. Glen Baker, a Board-certified pulmonologist and certified "B" reader,<sup>2</sup> examined appellant's February 16, 2013 x-rays and found parenchymal abnormalities consistent with pneumoconiosis. He reported small opacities in the middle and lower zones with profusion of 1/0. Dr. Baker also found other abnormalities including a questionable nodule on the left.

In a narrative report dated February 18, 2013, Dr. Baker stated that appellant worked as a boilermaker for 35 years with exposure to asbestos, coal dust, fly ash, and other chemicals. He noted that appellant reported greater asbestos exposure during the early years of his employment with better measures in the latter years. Dr. Baker noted that appellant had never smoked. He stated that appellant's February 16, 2013 chest x-ray demonstrated occupational pneumoconiosis category 1/0 with pulmonary asbestosis on the basis of 2000 ILO classification. Dr. Baker also diagnosed bronchitis based on appellant's history of intermittent cough and sputum production. He noted that appellant had a long history of asbestos exposure as well as exposure to coal dust, welding fumes, and welding smoke during his 35-year work history. Dr. Baker concluded that appellant's x-ray changes of early pulmonary asbestosis and symptoms of bronchitis were due to

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<sup>2</sup> A "B" reader is a physician certified by the National Institute for Occupational Safety and Health (NIOSH) as demonstrating proficiency in classifying radiographs of the pneumoconiosis. *Noah Ooten*, 50 ECAB 283 (1999).

his asbestos exposure as well as his exposure to coal dust, welding fumes, and welding smoke; “all of which together contributed to his occupational pneumoconiosis and bronchitis.”

OWCP referred appellant and a statement of accepted facts listing his federal employment to Dr. Allan Goldstein, a Board-certified pulmonologist and B reader, for a second opinion evaluation. In a report dated November 8, 2013, Dr. Goldstein provided appellant’s description of his employment history and his exposure to asbestos on the brakes of cranes. He stated that appellant worked in a steam coal fire plant in 1979 and helped to remove asbestos without a mask. Dr. Goldstein noted that appellant reported that insulators replaced asbestos and that appellant was in the area when they replaced it. He also stated that all the steam lines were insulated with asbestos in the various places that appellant worked. Appellant reported shortness of breath for 15 years with multiple episodes of bronchitis and pneumonia. He stated that his cough caused him to break ribs on one occasion. Dr. Goldstein reviewed appellant’s x-rays on November 8, 2013 and found no abnormalities consistent with pneumoconiosis or any other condition. He did report fractured ribs on the left. Dr. Goldstein stated that the records from Dr. Baker showed an obstructive defect, but that there was no letter from Dr. Baker. He found that appellant had asbestos exposure with shortness of breath. Dr. Goldstein diagnosed hypertension, gout, thyroid disease, elevated cholesterol, cervical spine, and lumbar spine degenerative joint disease as well as sleep apnea. He stated that appellant’s pulmonary functions were consistent with asthma and that his symptoms were consistent with asthma. Dr. Goldstein stated that appellant had asthmatic bronchitis which was not related to his work. He noted that appellant had an alleged history of asbestos exposure, but that his chest x-ray did not meet the criteria for asbestosis and neither did his pulmonary functions, or his diffusing capacity. Appellant also failed to demonstrate rales on examination.

By decision dated December 4, 2013, OWCP denied appellant’s claim for occupational pulmonary disease finding that the medical evidence did not establish a causal relationship between his diagnosed condition of asthmatic bronchitis and his employment.

Counsel requested an oral hearing before an OWCP hearing representative on December 17, 2013. He submitted an x-ray report dated February 16, 2013 from Dr. Matthew A. Vuskovich, a physician Board-certified in preventative medicine and “B” reader, finding parenchymal abnormalities consistent with pneumoconiosis. Dr. Vuskovich found small opacities in the middle and lower zones with a profusion of 1/0. He did not find any other abnormalities.

Appellant testified at the oral hearing on June 17, 2014 and listed his periods of employment at the employing establishment. Counsel argued that appellant’s 19-month employment at the employing establishment resulted in significant exposure that would produce or contribute to his occupational lung disease. He stated that both Drs. Baker and Vuskovich found x-ray evidence of occupational pneumoconiosis and that these reports were entitled to the weight of the medical evidence. In the alternative, counsel argued that there was a conflict of medical opinion evidence.

The employing establishment responded on July 18, 2014 and argued that there was no evidence that appellant was ever exposed to any substance at a level in excess of OSHA permissible exposure limits. It stated that the scope of assessment proved that appellant was

never exposed to respirable coal dust, total dust, or asbestos at a level that exceeded the permissible exposure limits. The employing establishment also stated that appellant, as a boilermaker, was not authorized to handle asbestos in any manner. It noted his report of using asbestos blankets as shields and could not deny this usage, but argued that this would not result in friable asbestos exposure. Counsel countered the employing establishment and noted that there were no studies specific to appellant and his initial work exposures.

By decision dated September 4, 2014, an OWCP hearing representative found that Dr. Goldstein's report was entitled to the weight of the medical evidence as it was based on appellant's complete employment history. She found that Dr. Baker's report was of diminished probative value as he did not distinguish between appellant's periods of federal and nonfederal job exposure.

### **LEGAL PRECEDENT**

OWCP's regulations define an occupational disease as "a condition produced by the work environment over a period longer than a single workday or shift."<sup>3</sup> 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 evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete factual and medical background, showing a causal relationship between the claimed condition and identified factors. The belief of a claimant that a condition was caused or aggravated by the employment is not sufficient to establish causal relation.<sup>4</sup>

### **ANALYSIS**

Appellant alleged that he developed occupational pneumoconiosis with pulmonary asbestosis and bronchitis due to exposures during his federal employment. He reported his employment history of working at the employing establishment for intermittent periods beginning as a crane operator from March through November 1977. Appellant then worked at the employing establishment as a boilermaker from August 7, 1978 to March 16, 1979 and from September 15, 1981 through January 27, 1982. The employing establishment indicated that his total period of employment was 1.6 years out of his 35-year work history. During these periods of employment, appellant alleged that he was exposed to coal dust, welding fumes, dust, and asbestos. He also submitted medical evidence from Dr. Baker noting that he had a 35-year occupational history of exposure to coal dust, dust, and asbestos. Dr. Baker diagnosed

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<sup>3</sup> 20 C.F.R. § 10.5(q).

<sup>4</sup> *Lourdes Harris*, 45 ECAB 545, 547 (1994).

occupational pneumoconiosis with pulmonary asbestosis and bronchitis based on appellant's description of his employment exposures.

OWCP referred appellant, a statement of accepted facts and a list of questions to Dr. Goldstein for a second opinion evaluation. Dr. Goldstein described appellant's work history and examined x-rays dated November 8, 2013. He found that these x-rays demonstrated no abnormalities consistent with pneumoconiosis or any other condition. Dr. Goldstein did report fractured ribs on the left. Dr. Goldstein diagnosed a variety of nonemployment-related conditions and stated that appellant's pulmonary functions and symptoms were consistent with asthma. He concluded that appellant had asthmatic bronchitis which was not related to his work. Dr. Goldstein noted that appellant had an alleged history of asbestos exposure, but that his chest x-ray did not meet the criteria for asbestosis and neither did his physical findings.

The Board finds that Dr. Goldstein's report is entitled to the weight of the medical evidence and his opinions do not support appellant's claim for occupational pneumoconiosis with pulmonary asbestosis and bronchitis. Dr. Goldstein was supplied with an accurate factual history and was aware that appellant's federal employment exposures were only a small part of his total work history. He did not find any clinical evidence of pneumoconiosis with pulmonary asbestosis. Dr. Goldstein further concluded that appellant's asthma and bronchitis were not related to exposures in his federal employment.

The Board finds that Dr. Baker's findings and conclusions are of diminished probative value as he based his findings and conclusions on the understanding that appellant had a 35-year history of exposure to dust and asbestos in federal employment. As Dr. Baker's report is not based on an accurate history of employment exposures it is of diminished probative value and is not sufficient to create a conflict with Dr. Goldstein's report or to require additional development by OWCP.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant has failed to meet his burden of proof in establishing a pulmonary condition due to exposures in his federal employment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 4, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 23, 2015  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board