



developed pleural asbestosis as a result of exposure to asbestos during his federal employment. He noted that he worked on naval ships every day from 1974 until his retirement on May 31, 1996. Appellant alleged that he first became aware of his claimed condition and its relation to his federal employment on March 10, 2011.

On October 17, 2012 OWCP accepted appellant's claim for asbestosis, and authorized appropriate treatment. The record also reflects that he received service-connected disability compensation benefits from the Department of Veterans Affairs for 60 percent disability due to asymptomatic asbestosis since August 1, 2011.

On March 7, 2013 appellant filed a claim for a schedule award (Form CA-7). By letter dated June 13, 2013, OWCP informed him that he was entitled to a schedule award for 64 percent combined impairment of his lungs due to asbestosis. However, it noted that as appellant had received benefits from the Department of Veterans Affairs for the same time period, he must make an election between the schedule award and his benefits from the Department of Veterans Affairs. An election letter is not contained in the case record. However, the record reflects that OWCP did not pay appellant compensation for a schedule award.

On April 1, 2015 appellant filed an occupational disease claim (Form CA-2) alleging that he suffered from vocal cord cancer as a result of exposure to asbestos fiber and dust while working aboard many different naval ships at the employing establishment from 1975 to 1996.<sup>2</sup>

In a statement received by OWCP on April 16, 2015, appellant noted that his federal employment duties required him to inspect ship areas such as the boilers and pipes which contained asbestos fibers and dust. He noted that, from 1970 to 1974, he served aboard the USS Sierra AD-18 as an E-3 fireman. From 1975 to 1980 appellant worked for the employing establishment as a metals inspector in the nondestructive testing department where he was exposed to asbestos dust and fibers, and that from 1980 through 1996 he was present on a weekly basis rather than a daily basis and was exposed to asbestos while checking on the various ship engines and fire rooms aboard the ships.

In a February 3, 2015 report, Dr. Nadir Ahmad, a Board-certified otolaryngologist, noted that appellant was referred for evaluation of left vocal cord lesion. He noted that appellant's microlaryngoscopy with biopsy of the left anterior true vocal cord revealed squamous papilloma with no dysplasia. Dr. Ahmad noted that appellant had related developing a raspy voice in October 2014 and that it had worsened over time. He indicated that appellant quit smoking over 24 years ago. Dr. Ahmad recommended a repeat microlaryngoscopy with biopsy, noting concern that there may be underlying dysplasia or early malignancy.

On February 18, 2015 Dr. Ashleigh Allen, a Board-certified pathologist, interpreted a surgical pathology report as showing: (a) vocal cord, left anterior lesion anterior portion, biopsy -- squamous cell carcinoma with focus suspicious for invasion; (b) vocal cord, left anterior

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<sup>2</sup> OWCP initially assigned OWCP File No. xxxxxx568 to this claim. However, because appellant alleged the same employment factors contributed to his vocal cord cancer, OWCP combined this claim with the current claim and closed File No. xxxxxx568.

lesion, posterior portion, biopsy -- squamous cell carcinoma with focal invasion; and (c) vocal cord, left anterior lesion, medial portion, biopsy -- portion of dysplastic squamous mucosa.

In a May 18, 2015 report, Dr. Gregory Kubicek, a Board-certified radiation oncologist, opined that appellant had laryngeal cancer and that asbestos had been related to several types of cancer including laryngeal cancer. He noted that a 2006 report by the National Institutes of Health reported that asbestos exposure was determined to be a cause of laryngeal cancer and that the cancer risk was dependent on the duration of the exposure. Dr. Kubicek noted that due to asbestos exposure, appellant had a more than double risk of developing laryngeal cancer compared to workers not exposed to asbestos. He further noted that it was impossible to say with any one individual whether or not the cancer was asbestos related or related to some other etiology. However, given the connection between appellant's diagnosis of laryngeal cancer and his asbestos exposure, Dr. Kubicek opined that it was reasonable to assume that exposure to this known carcinogen was related to his cancer diagnosis.

By letter dated July 14, 2015, OWCP informed appellant that further factual and medical information was necessary to support his claim. It afforded him 30 days to submit this additional information.

Appellant subsequently responded to the development letter, noting that he had not smoked in over 40 years. With his response, appellant resubmitted medical reports already of record, as well as new reports from Dr. Ahmad. In his February 13, 2015 report, Dr. Ahmad related that he performed a direct microlaryngoscopy with excisional biopsy of the left true vocal cord lesion and rigid esophagoscopy. In a July 20, 2015 report, he noted that appellant was under his care for oncologic surveillance for his history of left true vocal fold squamous cell carcinoma treated with radiation therapy earlier this year. Dr. Ahmad also noted that appellant had a history of chronic asbestos exposure in the past. He indicated that there had been many reports linking asbestos with laryngeal cancer. Dr. Ahmad opined, "While I am not able to say that asbestos definitely was related to the development of his laryngeal cancer, I think it is both reasonable to assume and plausible that his chronic asbestos exposure, a known carcinogen, was related to the development of his cancer and likely played a role in his carcinogenesis."

By decision dated November 13, 2015, OWCP denied appellant's claim for laryngeal cancer, finding that he failed to meet the criteria establishing that the condition is causally related to his employment-related asbestosis. On December 14, 2015 it received his request for review of the written record by an OWCP hearing representative.

By decision dated April 21, 2016, OWCP's hearing representative affirmed OWCP's November 13, 2015 decision. She determined that the medical evidence was insufficient to establish causal relationship.

In an October 30, 2016 medical report, Dr. Steven E. Landenheim, a Board-certified otolaryngologist, reviewed appellant's medical history. He noted that appellant was a former smoker who previously smoked an average of 15 cigarettes a day for 20 years, but had not smoked for more than 25 years. Dr. Landenheim noted that appellant's use of alcohol was nominal. He discussed appellant's exposure to asbestos during his work as a fireman for the Navy from 1970 to 1974, while at the employing establishment from 1974 to 1996, and during a

yearlong home renovation project in 1976. Dr. Landenheim opined that based on appellant's medical history, history of asbestos exposure, and social history, it was his opinion, within a reasonable degree of medical certainty, that his asbestos exposure while serving in the military, working at the employing establishment, and during his home renovation project, were substantial contributing factors to his development of cancer of the larynx.

In a November 14, 2016 report, Dr. Arthur L. Frank, a Board-certified internist specializing in occupational medicine, reviewed appellant's records. He noted that appellant smoked less than one pack per day for approximately 20 years from the 1960s to the 1980s. Dr. Frank described appellant's exposure to asbestos during his military service, his work for the employing establishment, and in his home renovation work. He indicated that appellant was diagnosed in February 2015 with cancer of the vocal cords, which was treated with radiotherapy. Dr. Frank noted that, based upon the review of the material sent to him, within a reasonable degree of medical certainty, appellant had developed two asbestos-related conditions. First, he developed asbestos-related pleural disease, also called pleural asbestosis. Secondly, Dr. Frank noted that appellant developed a carcinoma of the larynx and this would have been caused by his exposures to asbestos in combination with his habit of cigarette smoking. He opined that the cumulative exposure that appellant had to asbestos would have contributed to this developing disease. Dr. Frank noted that the National Academy of Sciences found that asbestos caused laryngeal cancer.

In a decision dated May 4, 2017, OWCP denied modification of its April 21, 2016 decision. It determined that although appellant's physicians opined that exposure to asbestos was a contributing factor to the diagnosed cancer of the larynx, the medical evidence of record supported the fact that appellant had smoked for 20 years and that this was the cause of the cancer in his larynx. The hearing representative indicated that appellant was diagnosed with two conditions, *i.e.*, asbestosis caused by his employment factors and already approved by OWCP as compensable, and cancer in his larynx (throat/vocal cord cancer) as a result of smoking for 20 plus years. He opined that appellant's physician did not provide a precise opinion as to how appellant's employment exposure to asbestos caused the throat cancer and not some other nonwork-related condition, such as smoking cigarettes. The hearing representative concluded that the fact that appellant had asbestosis did not imply that asbestos was responsible for any other ailment he may have.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of FECA, that the claim was filed within the applicable time limitation, that the injury was sustained while 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.<sup>3</sup> These are the essential elements of each and every

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<sup>3</sup> *Joe D. Cameron*, 41 ECAB 153 (1989).

compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>4</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.

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence must include a physician's rationalized opinion on the issue of whether there is 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.<sup>5</sup>

### ANALYSIS

Appellant established that he was exposed to asbestos during the course of his federal employment. OWCP accepted that, as a result of this exposure, he developed asbestosis. However, it rejected appellant's claim that his asbestos exposure during his federal employment resulted in his diagnosed cancer of the larynx.

The Board finds that appellant has not met his burden of proof to establish that his cancer of the larynx was causally related to his employment-related asbestosis. The opinions of appellant's treating physicians, Dr. Ahmad and Dr. Kubicek are speculative and therefore cannot establish causal relationship.<sup>6</sup> Dr. Ahmad performed a direct microlaryngoscopy with excision biopsy on appellant's true vocal cord lesion and rigid esophagoscopy on February 13, 2015. In a July 20, 2015 report, he indicated that, while he was unable to conclude that appellant's asbestos exposure definitely related to the development of his laryngeal cancer, it was "reasonable to assume" that this chronic exposure to asbestos, a known carcinogen, was related to the development of his cancer and "likely" played a role in his carcinogenesis. The Board has found that the terminology "reasonable to assume" is speculative and equivocal in nature.<sup>7</sup> The Board

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<sup>4</sup> See *Irene St. John*, 50 ECAB 521 (1999).

<sup>5</sup> *Id.*

<sup>6</sup> *Lourdes Harris*, 45 ECAB 545, 547 (1994).

<sup>7</sup> *R.M.*, Docket No. 12-1880 (issued January 28, 2013).

has also found that the use of the term “likely” renders an opinion speculative in nature.<sup>8</sup> Dr. Ahmad’s opinion is therefore speculative and of limited probative value.

Similarly, Dr. Kubicek noted that, while appellant had laryngeal cancer, it was impossible to say with any one individual whether or not the cancer was asbestos related or related to some other etiology. Given the connection between appellant’s diagnosis of laryngeal cancer and his asbestos exposure, it was reasonable to assume that exposure to his known carcinogen was related to his cancer diagnosis. As previously noted, a medical opinion stated in terminology of a reasonable assumption is speculative and equivocal.<sup>9</sup> Medical opinions that are speculative or equivocal are of diminished probative value.<sup>10</sup> Accordingly, Dr. Kubicek’s opinion is also speculative. Neither Dr. Ahmad nor Dr. Kubicek provided an opinion on causal relationship with a reasonable degree of medical certainty, their opinions are therefore of limited probative value.<sup>11</sup>

Dr. Allen merely interpreted a surgical pathology report as showing vocal cord carcinoma. However, he did not provide an opinion on causal relationship. Accordingly, this diagnostic study is of limited probative value.<sup>12</sup>

On reconsideration appellant submitted two new medical reports. In an October 30, 2016 report, Dr. Landenheim reviewed appellant’s medical, employment, and social histories. He noted that appellant smoked approximately 15 cigarettes a day for 20 years, but that he had not smoked for over 25 years. Dr. Landenheim noted nominal alcohol use. He discussed appellant’s asbestos exposure during his military service from 1970 to 1974, during his federal employment from 1974 to 1996, and during a yearlong home renovation project. Dr. Landenheim concluded that all three of these exposures to asbestos were substantial and constituted contributing factors to appellant’s cancer of the larynx. Similarly, Dr. Frank also reviewed appellant’s records. He discussed appellant’s smoking history and exposure to asbestos during his military service, work for the employing establishment, and his home renovation project. Dr. Frank noted that, within a reasonable degree of medical certainty, appellant had developed two asbestos-related conditions: asbestos-related pleural disease, which was related to his federal employment; and carcinoma of the larynx, which was related to his exposure to asbestos in combination with his cigarette smoking. The Board finds that neither of these opinions are sufficient to establish causal relationship between appellant’s laryngeal cancer and his exposure to asbestos during his federal employment. Although Dr. Landenheim and Dr. Frank discussed appellant’s asbestos exposure during his federal employment as well as other potential contributing factors including asbestos exposure during appellant’s military service, asbestos exposure during his home renovation project, and his smoking history, these physicians did not provide a rationalized medical explanation as to how appellant’s employment-related asbestosis was the cause of his vocal cord

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<sup>8</sup> See *C.O.*, Docket No. 16-0918 (issued August 1, 2016).

<sup>9</sup> *Supra* note 6.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *G.M.*, Docket No. 14-2057 (issued May 12, 2015).

carcinoma. These opinions are conclusions, not rationalized medical opinions. A mere conclusion without the necessary rationale explaining how and why the physician believes that appellant's accepted injury resulted in a diagnosed condition is insufficient to meet his burden of proof.<sup>13</sup> Without explaining how physiologically appellant's employment-related asbestosis caused or contributed to his diagnosed condition, the physicians' opinions regarding causal relationship are of limited probative value.<sup>14</sup>

An award of compensation may not be based on surmise, conjecture, speculation, or on the employee's own belief of causal relation.<sup>15</sup> As appellant has not submitted medical evidence sufficient to establish causal relationship between his employment-related asbestosis and his cancer of his larynx, he has failed to meet his burden of proof.

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 not established that he developed cancer of his larynx causally related to employment-related asbestosis.

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<sup>13</sup> C.S., Docket No. 17-0399 (issued June 19, 2017).

<sup>14</sup> J.S., Docket No. 17-0967 (issued August 23, 2017).

<sup>15</sup> D.D., 57 ECAB 734 (2006).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated May 4, 2017 is affirmed.

Issued: January 2, 2018  
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board