

105 LRP 52075

**ELIZABETH H. KRAMM, Appellant
claiming as widow of LEONARD O.
KRAMM and DEPARTMENT OF THE
ARMY, MOBILITY EQUIPMENT
COMMAND, Saigon, Republic of
Vietnam, Employer**

57 ECAB

No. 05-715

October 6, 2005

Ruling

The ECAB ruled that a claimant established that his bladder cancer was causally related to his exposure to Agent Orange and pesticides while in the performance of his federal duties.

Meaning

In cases involving chemical exposure and cancer, an epidemiologic study can provide sufficient rationale for a physician's opinion on the cause of a condition.

Case Summary

A maintenance management specialist worked in Vietnam from 1968 through 1975. During that employment, he was exposed to Agent Orange and pesticides for up to 24 hours a day. He later developed bladder cancer and died partly as a result of his cancer. His widow sought death benefits under the FECA. While the employing agency's examining physician said there was no scientific validity to the claimant's position that the worker's chemical exposure caused his cancer, the ECAB found the weight of the medical evidence established just the opposite.

A urologist, who performed several surgeries for bladder cancer, concluded that the worker's cancer was related to his chemical exposure. That opinion was based on studies showing that the herbicides used in Vietnam were related to the development of bladder cancer. An occupational and preventative medicine specialist listed specific studies in support of his opinion that the worker's exposure in Vietnam triggered his cancer. He provided additional rational

for that opinion, stating that the time lag between the worker's exposure and the bladder cancer was typical and that the exposure was the worker's single greatest risk factor for developing bladder cancer.

The OWCP also referred the worker to two urologists before his death. Both concluded that the exposure was the cause of the cancer and noted medical studies supporting a causal link between Agent Orange and the herbicides used in Vietnam to bladder cancer. All of this evidence was enough for the widow to prove a sufficient causal link between the worker's employment and his disease.

Full Text

APPEARANCES

Case Submitted on the Record

James R. Linehan, Esq., for the appellant

Office of Solicitor, for the Director

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge

WILLIE T.C. THOMAS, Alternate Judge

MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On February 3, 2005 appellant filed a timely appeal of a November 26, 2004 merit decision of the Office of Workers Compensation Programs which found that the employee's bladder cancer and peripheral neuropathy were not causally related to his employment. Pursuant to 20 CFR §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this case.

ISSUE

The issue is whether the employee's bladder cancer and peripheral neuropathy were causally related to his employment.

FACTUAL HISTORY

On May 17, 1999 the employee, then 74 years old, filed an occupational disease claim for bladder cancer and peripheral neuropathy that he attributed to

his exposure to Agent Orange and pesticides while working as a maintenance management specialist, resource management specialist and equipment specialist in Vietnam from October 21, 1968 to April 25, 1975. He stated that he worked and stayed in areas where Agent Orange and pesticides were applied and that he was exposed to these chemicals 24 hours a day at times. Appellant's voluntary retirement was effective May 2, 1980. Appellant stated that he was unaware of the relation between his condition and his herbicide exposure until 1997.

On September 25, 1997 Dr. M. Sheldon Polsky, a Board-certified urologist, performed a cystoscopy which revealed a transitional cell carcinoma of the bladder, which Dr. Polsky resected. In a February 24, 1998 report, Dr. Michael I. Zuflacht, a neurologist, stated that the employee's bladder cancer and his chronic obstructive pulmonary disease may indeed be secondary to his exposure to Agent Orange. Dr. Polsky performed resections of recurrent bladder tumors on January 5, 1998, February 25 and July 8, 1999.

In response to an Office request for further information on his claim, the employee stated that in Vietnam he traveled and lived where Agent Orange, which contained Dioxin and insecticides, were sprayed and that he worked on contaminated equipment. In a November 1, 1999 report, Dr. William H. Candler of the employing establishment, Board-certified in preventive medicine and occupational medicine, stated that there was no scientific validity to the employee's claim that his bladder cancer and peripheral neuropathy were related to his exposure to Agent Orange in Vietnam, as studies of chemical factory workers and servicemen working with Agent Orange did not find an increase in system cancers and cigarette smoking was estimated to cause 25 to 60 percent of all bladder cancer cases. In a November 15, 1999 telephone call, the employing establishment stated that it was not denying that the employee came in contact with the herbicide, but that there was no way it could verify that he was in areas where spraying was conducted at

the time of the spraying.

By decision dated December 7, 1999, the Office found that the medical evidence was insufficient to establish that the employee's bladder cancer and peripheral neuropathy were related to his employment.

The employee requested reconsideration and submitted a November 30, 1999 report from Dr. Zuflacht stating that he had mild sensory peripheral neuropathy consistent with his exposure to Agent Orange and a December 31, 1999 report from Dr. Polsky stating that studies showed that herbicides utilized in Vietnam were related to the development of bladder cancer and that he believed the employee's bladder cancer was related to such herbicide exposure. The Office referred the employee, his medical records and a statement of accepted facts to Dr. Sammy Vick, a Board-certified urologist, for a second opinion on his condition and its relationship to his employment. In a May 2, 2000 report, he stated that the employee's recurrent transitional cell carcinoma of the bladder appeared to be related to his Agent Orange exposure in Vietnam. In response to an Office request for an explanation of how this exposure caused this condition, Dr. Vick stated in a June 6, 2000 report: There have been animal studies which revealed that exposure to these herbicides resulted in bladder cancer developing in them, so it is reasonable to assume that his exposure to Agent Orange and to other herbicides are the causative agent for his transitional cell carcinoma and there is medical data to support that.

In an August 15, 2000 decision, the Office found that this report from Dr. Vick was insufficient to establish that the employee's bladder cancer was related to his employment. The employee underwent further resections of recurrent bladder tumors on January 26 and May 2, 2000 and on June 13, 2000 Dr. Polsky performed a radical cystoprostatectomy for recurrent bladder carcinoma that had spread to his right ureter. On November 15, 2000 the employee requested reconsideration and submitted additional medical evidence. In a November 6, 2000 report, Dr.

Polsky cited further articles from the medical literature, stating that these studies, some of which were carried out under the auspices of the U.S. Government, were but a few of the many studies which related exposure to herbicides in Vietnam and the development of bladder carcinoma. Dr. Polsky stated that this relationship had been proven and publicized and concluded: [T]here is no doubt in my mind that [the employee s] exposure to herbicides during his long tenure in Vietnam is the cause of his bladder and ureteral cancer. In a November 9, 2000 report, Dr. Zuflacht stated that he strongly believed that the employee s sensory motor peripheral neuropathy was from his exposure to Dioxin.

On June 26, 2001 the Office referred the employee, his medical records and a statement of accepted facts to Dr. Michael E. Newell, a Board-certified urologist, for a second opinion on his condition and its relationship to his employment. In an August 3, 2001 report, he stated that there was a known statistical relationship between the carcinogens present in Vietnam and the subsequent development of bladder cancer and peripheral neuropathies and that he strongly agreed with Dr. Polsky s opinion that the employee s bladder cancer and other malignancies were a consequence of his exposure to herbicides and other environmental toxins during his tenure in Vietnam. In response to an Office request for medical rationale for this opinion, Dr. Newell, in an October 12, 2001 report, cited studies that he said proved that Agent Orange was carcinogenic and detrimental to overall health. He stated that the employee had significant exposure to Agent Orange and other herbicides during his seven years in Vietnam and concluded: Needless to say, I cannot (nor can anyone) give you the precise mechanism at the cellular level whereby a known carcinogen causes cancer.

By decision dated October 30, 2001, the Office found that the employee failed to submit medical evidence that attributed his bladder cancer and neuropathy to his exposure to herbicides in Vietnam and that its referral doctors, Dr. Vick and Dr. Newell,

also did not attribute his bladder cancer and neuropathy to his exposure to herbicides in Vietnam.

The employee requested reconsideration and submitted further articles from the medical literature, 2 Air Force health studies and a September 1999 information pamphlet on Agent Orange from the Department of Veterans Affairs stating that 15 different herbicides were used in Vietnam between January 1962 to September 1971, that over 80 percent of the herbicides sprayed in Vietnam was Agent Orange, that one of the chemicals in Agent Orange contained minute traces of dioxin and that more than 20 million gallons of herbicide were sprayed over six million acres. The February 2000 final report of the Air Force s epidemiologic investigation of health effects in Air Force personnel following exposure to herbicides found that a significant increase in malignant neoplasms was observed in the low dioxin category but there was no such increase for personnel in the high dioxin category. The report concluded that after 15 years of surveillance, personnel who sprayed Agent Orange did not exhibit a significantly increased risk for neoplastic disease, nor did they show a positive dose-response relation between dioxin and malignant neoplastic conditions.

By decision dated April 19, 2002, the Office found that the employee had not established that his bladder cancer and peripheral neuropathy were causally related to his exposure to herbicides in Vietnam.

On September 16, 2002 the employee s wife, who he authorized to represent him, requested reconsideration and submitted additional medical evidence. In a November 5, 2001 report, Dr. Zuflacht stated that the employee s sensory motor peripheral neuropathy arose directly out of his exposure to Agent Orange in Vietnam. In a May 25, 2002 review of the employee s medical evidence and of the medical literature, Dr. Craig N. Bash, a neuroradiologist, concluded that his bladder cancer and his peripheral neuropathy were caused by his exposure to herbicides in Vietnam on the basis that the employee was exposed to herbicides there for seven years, he was

healthy before he went to Vietnam, he had not worked in or near toxic chemicals before or after his tour in Vietnam, numerous literature articles supported a causal relation and no other potential cause of these conditions had been suggested by any physician. In an August 28, 2002 report, Dr. Arch I. Carson, Board-certified in preventive medicine and in occupational medicine, reviewed the employee's history, noting that long-term significant exposure to herbicide defoliants during his seven years in Vietnam was documented. He noted that the carcinogenic contaminants of Agent Orange were known bladder carcinogens and concluded:

[Appellant's] ongoing exposures to these over more than six years make his overall bladder cancer risk high. Further, there is little in the rest of his occupational, family or social history other than smoking, to account for increased bladder cancer risk. The time lag between [appellant's] exposures in Vietnam and his bladder cancer diagnosis (22 to 29 years) is within the usual latent period seen for the occurrence of environmental chemical induced bladder cancers.

The Veterans Administration has determined that military operatives who were involved in Operation Ranch Hand (the defoliant spraying program) or who were present for extended periods in defoliant contaminated areas, are eligible for health care coverage for their bladder cancers, purely because of the significantly increased risk associated with those exposures. [The employee] experienced exposures comparable to the highest exposure class within the military. Although defoliant exposures are not [the employee's] only risk factor for bladder cancer, in reasonable medical probability, they are the greatest single risk factor. Therefore, [the employee's] chemical exposures in the course and scope of his duties as a federal employee are more likely than not the cause of his bladder cancer.

By decision dated November 1, 2002, the Office found that causal relationship between the employee's exposure to herbicides and his bladder cancer and peripheral neuropathy had not been established.

Appellant, the employee's widow, requested reconsideration and submitted additional evidence. A certificate of death showed that the employee died on October 1, 2002. Pancreatitis was listed as the immediate cause of death, cancer of the bladder related to Agent Orange was listed as an underlying cause and the question of whether tobacco use contributed to appellant's death was answered no. In a December 28, 2002 report, Dr. Carson reiterated the findings and conclusions of his August 28, 2002 report.

By decision dated June 13, 2003, the Office found that Dr. Carson's opinion supporting causal relation was speculative and equivocal, as he could not state with certainty that cigarette smoking and exposure to asbestos had no connection to the employee's bladder cancer.

Appellant requested reconsideration and submitted a May 10, 2004 report from Dr. Carson stating that recently published research had demonstrated the persistence of internal exposure to bladder carcinogens absorbed during the Vietnam war even 30 years after the cessation of environmental exposures. Dr. Carson cited research reports that he stated showed a scientifically recognized increased risk of bladder cancer in Vietnam veterans and concluded, based upon reasonable medical certainty, that the employee's chemical exposure in his employment was the cause of his bladder cancer.

By decision dated November 26, 2004, the Office found that the additional evidence was insufficient to warrant modification of its prior decisions. The Office found that Dr. Carson had an inaccurate history of the employee's exposure to Agent Orange, as herbicides were not sprayed in Vietnam after 1970 and that he noted, but failed to adequately consider the employee's history of heavy cigarette smoking.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees Compensation Act 1 has the burden of establishing that 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 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 and every 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 diagnosed condition is causally related to the employment factors identified by the claimant. The medical opinion 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

The employee had the burden of establishing by the weight of the reliable, probative and substantial evidence that his condition was caused or adversely affected by his employment. As part of this burden he must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relation. 5

Causal relation is a medical question that generally can only be established by competent medical opinion evidence. 6 Scientific studies, like medical literature, have probative value only to the extent they are interpreted by a physician rendering an opinion on causal relation. 7 In claims for compensation for cancer attributed to employment

exposure to chemicals or radiation, the Board has noted the importance of epidemiologic studies, as interpreted by physicians, to adjudicate the issue of causal relation. The Board has instructed the Office to obtain epidemiologic studies on the incidence on malignant lymphomas among workers with jobs similar to the claimants, 8 has ordered referral to an epidemiologist to resolve a conflict of medical opinion of whether a claimant's liver cancer was related to his exposure to chemicals 9 and has relied on an epidemiologic study as a basis of a finding that a claimant's leucopenia was related to his exposure to chemicals. 10 The Board also has found a conflict of medical opinion on whether the current medical literature supported a causal relation between occupational exposure to chemicals and radiation and leukemia. 11

ANALYSIS

The Board finds that the employee did not establish that his peripheral neuropathy was causally related to his exposure to Agent Orange and pesticides. Dr. Zuflacht, a neurologist, stated that there was such a relationship in several reports, but did not provide medical rationale to explain his conclusion in any report. As medical reports not containing rationale on causal relation are entitled to little probative value and are generally insufficient to meet an employee's burden of proof, 12 Dr. Zuflacht's reports are not sufficient to meet the employee's burden of proof. Dr. Newell, a Board-certified urologist, stated that there was a known statistical relationship between the carcinogens present in Vietnam and peripheral neuropathies, but he did not expand on this statement or state directly that the employee's peripheral neuropathy, a condition not within his medical specialty, was related to exposure to Agent Orange and pesticides. Dr. Bash, a neuroradiologist, stated that the employee's peripheral neuropathy was caused by his exposure to herbicides in Vietnam, but did not cite specific articles to support his contention that numerous literature articles supported a causal relation.

The Board finds, however, that the employee's

bladder cancer was causally related to his exposure to Agent Orange and pesticides in Vietnam. Dr. Polsky, the Board-certified urologist, who performed several surgeries for this condition, concluded that the employee's bladder cancer was related to his herbicide exposure, based on studies showing that the herbicides used in Vietnam were related to the development of bladder cancer. Dr. Carson, Board-certified in occupational medicine and in preventive medicine, listed specific studies in support of his opinion that the employee's chemical exposure was the cause of his bladder cancer. He provided additional rationale for this opinion, stating that the time lag between the exposure and the bladder cancer was within the usual latent period and that his chemical exposure was the greatest single risk factor. Dr. Carson acknowledged that smoking was a risk factor, but concluded that the chemical exposure was the cause of the employee's bladder cancer.

These reports from the employee's physicians lend considerable support to his claim that his bladder cancer was causally related to his exposure to Agent Orange and pesticides in Vietnam. For further opinion on causal relation, the Office referred appellant to two Board-certified urologists, Dr. Vick and Dr. Newell. Both physicians concluded that there was a causal relationship between appellant's exposure to Agent Orange in Vietnam and the development of his bladder cancer. Dr. Vick stated that, based on animal studies of the relationship between exposure to the herbicides the employee was exposed to and the development of bladder cancer, it was reasonable to assume that his exposure to Agent Orange and to other herbicides are the causative agent for his transitional cell carcinoma. Dr. Newell cited to studies that Agent Orange was carcinogenic and concluded that the employee's bladder cancer was a consequence of his exposure to herbicides and other toxins in Vietnam.

The only medical report negating a causal relation was from Dr. Chandler of the employing establishment, Board-certified in preventive medicine and in occupational medicine. He generally stated that

there was no scientific validity to the employee's claim, as studies of chemical factory workers and servicemen working with Agent Orange did not find an increase in system cancers. However, the greater weight of medical opinion is against Dr. Chandler's position and for the proposition that the epidemiologic studies establish a relationship between the chemicals to which the employee was exposed and the condition he sustained, bladder cancer. As noted above, in cases involving chemical exposure and cancer, reliance on epidemiologic studies is a proper basis and can constitute sufficient rationale, for a physician's opinion on causal relationship. The medical evidence does not establish causal relation beyond all possible doubt, but it is sufficient to reach a rational and sound conclusion that the employee's bladder cancer was causally related to his exposure to Agent Orange and pesticides in Vietnam.

CONCLUSION

The Board finds that the employee established that his bladder cancer was causally related to his exposure to Agent Orange and pesticides in Vietnam, but did not establish that his peripheral neuropathy was related to such exposure.

ORDER

IT IS HEREBY ORDERED THAT the November 26, 2004 decision of the Office of Workers Compensation Programs is affirmed with regard to the employee's claim for peripheral neuropathy and reversed with regard to his claim for bladder cancer.

1 5 USC § 8101 et seq.

2 Joe D. Cameron, 41 ECAB 150 (1989); Elaine Pendleton, 40 ECAB 1143 (1989).

3 Victor J. Woodhams, 41 ECAB 345 (1989).

4 Solomon Polen, 51 ECAB 341 (2000); see also Michael E. Smith, 50 ECAB 313 (1999).

5 Froilan Negron Marrero, 33 ECAB 796 (1982).

6 Robert G. Morris, 48 ECAB 238 (1996).

7 Eloise Shouse, 34 ECAB 572 (1983).

8 Eleanor E. Dringus, 35 ECAB 530 (1984).

9 Martha A. Whitson, 36 ECAB 370 (1984).

10 Milton H. Ritchie, 34 ECAB 1759 (1983).

11 Victor D. Timian, 43 ECAB 249 (1991).

12 Ceferino L. Gonzales, 32 ECAB 1591 (1981).