

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of BAILEY VARNADO, JR. and DEPARTMENT OF THE NAVY,  
MARE ISLAND NAVAL SHIPYARD, Vallejo, CA

*Docket No. 03-1257; Submitted on the Record;  
Issued July 30, 2003*

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DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether appellant has a respiratory disease or pulmonary impairment causally related to asbestos exposure in the course of his federal employment.

This case is before the Board for the second time. In the first appeal, the Board set aside the Office of Workers' Compensation Programs' December 11 and July 16, 2001 decisions finding that appellant had no pulmonary condition or impairment due to his exposure to asbestos.<sup>1</sup> The Board remanded the case for resolution of a conflict in medical opinion on the issue of whether appellant has a pulmonary condition due to asbestos exposure and, if so, the extent of any permanent impairment. The findings of fact and conclusions of law from the prior decision are hereby incorporated by reference.

By letter dated October 29, 2002, the Office referred appellant, together with the case record and a statement of accepted facts, to Dr. David S. Safianoff, who is Board-certified in internal medicine and in pulmonary diseases, for an impartial medical examination.

In a decision dated March 7, 2003, the Office denied appellant's claim on the grounds that the weight of the medical evidence, as represented by the report of Dr. Safianoff established that appellant did not have an asbestos-related pulmonary condition due to factors of his federal employment.

The Board finds that appellant has not established that he has a respiratory disease or pulmonary impairment causally related to asbestos exposure in the course of his federal employment.

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<sup>1</sup> *Bailey Varnado, Jr.*, Docket No. 02-863 (issued August 22, 2002).

Section 8123 of the Federal Employees' Compensation Act<sup>2</sup> provides that where there is disagreement between the physician making the examination for the United States and the physician of the employee, the Office shall appoint a third physician who shall make an examination. In situations where there exists a conflict in medical opinion and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.<sup>3</sup>

In a report dated November 18, 2002, Dr. Safianoff described appellant's medical and occupational history and listed findings on physical examination. He noted that he had ordered computerized tomography (CT) scans and pulmonary function studies and was attempting to obtain prior x-rays and CT scans. In a report dated December 4, 2002, Dr. Safianoff reviewed the medical evidence of record. He noted that he did not have appellant's prior CT scans or x-rays for a direct reading. Dr. Safianoff stated:

“While [appellant's] pulmonary function test results have been somewhat variable as noted by Dr. Addison, they have actually been fairly consistent over a long period of time, that is, they show reduction of lung volume of a moderate to severe degree, reversible small airways disease, decreased DLCO [carbon monoxide diffusing capacity] with a normal DL/VA [diffusing capacity of the lung/vacuum aspiration] ratio. The only chest film I have also shows some hypoventilation. Overall these pulmonary functions show two very consistent abnormalities. One is just some element of bronchospasm. Secondly, he appears to have restrictive disease that is most likely extra parenchymal in nature, that is, it is most consistent with neuromuscular disease.

“This would fit the available facts most closely. That is, we have [appellant] with symptomatic dyspnea, abnormal pulmonary function tests but without consistent radiographic evidence of any interstitial process. It would be extremely unusual for someone to develop any interstitial lung disease particularly a pneumoconiosis like asbestosis without radiographic evidence. This is particularly true over the [eight-]year time interval. It would also explain the negative middle lobe biopsy obtained in 1994. There is a report of abnormalities on CT scan in 1994, though again I do [not] have those films. He certainly possibly had some acute process in the lungs that then resolved. Alternatively, much of these could have been atelectasis due to hypoventilation. The radiographic descriptions do not sound like they are truly atelectasis, but it is difficult to be certain without being able to see these films personally.”

Dr. Safianoff opined:

“I do not believe that [appellant] has any radiographic evidence of either asbestosis or for that matter asbestos exposure. As noted previously, I believe

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<sup>2</sup> 5 U.S.C. § 8107 *et seq.*

<sup>3</sup> *Leanne E. Maynard*, 43 ECAB 482 (1992).

that his pulmonary function abnormalities represent a combination of a minor degree of bronchospasm and some level of neuromuscular disease. Neither of these would be relatable to asbestos exposure.”

The Board has carefully reviewed the opinion of Dr. Safianoff and finds that it has reliability, probative value and convincing quality with respect to his finding that appellant has not sustained a pulmonary condition causally related to asbestos exposure. Dr. Safianoff provided a thorough factual and medical history and accurately summarized the relevant medical evidence. He further supported his conclusions with medical rationale by noting that appellant did not have radiographic evidence of asbestosis or any interstitial process. Consequently, Dr. Safianoff’s opinion is entitled to the special weight accorded an impartial medical specialist. Appellant, therefore, has failed to establish that he sustained a pulmonary condition causally related to factors of his federal employment.

The decision of the Office of Workers’ Compensation Programs dated March 7, 2003 is affirmed.

Dated, Washington, DC  
July 30, 2003

Alec J. Koromilas  
Chairman

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member