

FACTUAL HISTORY

On February 4, 2004 appellant, then a 67-year-old former tire repairman, filed an occupational disease claim alleging that he sustained injuries to his left knee and heart due to factors of his federal employment from 1966 to 1992. He stated that he became aware of his condition on August 30, 1976 and first attributed it to his employment duties on January 11, 2004.² In a statement accompanying his claim, appellant described his duties as a tire repairman from 1966 to 1992. Appellant retired effective September 30, 1992.

The record contains a Republic of the Philippines Social Security System medical certification report completed by a physician and signed by appellant.

By letter dated April 8, 2004, the Office informed appellant that a March 10, 1982 agreement between the United States Government and the government of the Republic of the Philippines transferred coverage of injured Philippine Nationals employed by the Federal Government from the Federal Employees' Compensation Act to the Philippine Social Security System. The Office noted that, as appellant continued to work through September 30, 1992, his injury would be covered by the Philippine Social Security System. The Office requested that he submit any evidence that would establish that he was not covered by the Philippine Social Security System.

In a letter dated May 6, 2004, appellant contended that he was covered under the Federal Employees' Compensation Act because his illness began prior to March 12, 1982.

By decision dated May 25, 2004, the Office denied appellant's claim on the grounds that he was not a civil employee covered under the Federal Employees' Compensation Act at the time of his injury.³

On June 15, 2004 appellant requested a review of the written record. He submitted a statement to the hearing representative arguing that the 1982 agreement only affected workers who were injured after that date. He also asserted that he should receive Philippine Social Security System benefits and Federal Employees' Compensation Act benefits. Appellant further contended that a coworker received Federal Employees' Compensation Act benefits even though he worked until 1992.

By decision dated November 5, 2004, the hearing representative affirmed the Office's May 25, 2004 decision. He found that appellant was not entitled to Federal Employees' Compensation Act benefits as part of his claimed occupational disease occurred subsequent to September 10, 1982 and as he was eligible for benefits under the Philippine Social Security System.

² On the reverse side of the claim form, appellant's supervisor indicated that he had knowledge of appellant's condition on August 30, 1976 and that he stopped work from August 31 to September 9, 1976.

³ In a medical report dated May 17, 2004, a physician indicated that he initially treated appellant on January 22, 1994 for complaints of left leg pain and chest pain after exertion and noted that the problems "started 25 to 30 years ago but [he] endured the pains for fear of heaving a bad work record."

On January 6, 2005 appellant requested reconsideration of his claim. He again argued that a coworker received Federal Employees' Compensation Act benefits even though he worked until 1992.

In a decision dated March 7, 2005, the Office denied modification of the May 25 and November 5, 2004 decisions. The Office noted that the coworker mentioned by appellant filed for benefits in 1979 "prior to the restriction currently set forth under [the Federal Employees' Compensation Act]."

LEGAL PRECEDENT

The Office's procedure manual provides:

"Under an agreement between the United States and the Republic of the Philippines signed on March 10, 1982, the Philippine Medical Care Program and the Employees' Compensation Program were extended to all Philippine national direct-hire employees of the U.S. Military Forces, except for those employees who are not members of the Philippine Social Security System.

"(1) Philippine nationals who sustain traumatic injury on or after March 10, 1982, and are eligible for benefits under the Philippine system are not entitled to Federal Employees' Compensation Act benefits.

"(2) Philippine nationals who sustain occupational disease due to work exposure of which at least a portion occurred on or after September 10, 1982, and who are eligible for Philippine benefits, are not entitled to Federal Employees' Compensation Act benefits.

"(3) Whenever a claim from a Philippine national who is covered under the local system is received for injury or occupational disease sustained outside of the time frames specified above, the claim should be denied with compensation order, and full appeal rights, on the basis that the claimant is not a civil employee of the United States for purposes of compensation coverage under the [Federal Employees' Compensation Act]."⁴ (Emphasis in the original.)

ANALYSIS

In this case, appellant attributed his knee and heart problems to factors of his federal employment from 1966 until 1992. He provided a description of his employment duties as a tire repairman from 1966 until 1992. The Office's procedure manual states that, "*Philippine nationals who sustain occupational disease due to work exposure of which at least a portion occurred on or after September 10, 1982, and who are eligible for Philippine benefits, are not*

⁴ Federal (FECA) Procedure Manual, Part 4 -- Special Case Procedures, *Philippine Nationals*, Chapter 4.801.10(a) (September 1994).

entitled to Federal Employees' Compensation Act benefits."⁵ (Emphasis in the original.) In this case, appellant maintained that employment duties from 1966 to 1992 caused or contributed to his condition. Consequently, as at least a portion of the work exposure to which appellant attributed his occupational disease occurred after September 10, 1982, he is not entitled to Federal Employees' Compensation Act benefits unless he is ineligible for benefits under the Philippine Social Security System. The Office requested that appellant submit supporting evidence to show that he was not entitled to benefits under the Philippine Social Security System. Appellant did not provide the requested information but instead argued that he could receive coverage under the Federal Employees' Compensation Act and the Philippine Social Security System. The record contains a medical report showing that appellant received coverage under the Philippine Social Security System. Consequently, as appellant attributed part of his occupational disease to work exposure after September 10, 1982, and as he is eligible for benefits under the Philippine Social Security System, he is not a civil employee for purposes of coverage under the Federal Employees' Compensation Act.⁶

CONCLUSION

The Board finds that appellant is not a civil employee of the United States for purposes of coverage under the Federal Employees' Compensation Act.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated March 7, 2005, November 5 and May 25, 2004 are affirmed.

Issued: August 18, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

⁵ *Id.*

⁶ See *Damiana C. Pasion (Bedasto S. Pasion)*, 38 ECAB 744 (1987).