



became aware of his medical conditions on January 31, 1990 and first realized that these conditions were employment related on May 14, 1990. Appellant began working for the employing establishment on August 30, 1983<sup>2</sup> and resigned effective October 1, 1990.

On October 5, 1998 appellant submitted a copy of a designation of beneficiary form relating to federal employee death benefits, his job appointment affidavit with oath of office and a 1988 certificate of medical examination.

By decision dated October 29, 1998, the Office denied appellant's claim on the ground that he was not a civil employee of the United States for purposes of the Act. The Office based its decision on a March 10, 1982 agreement between the United States and the Republic of the Philippines. This agreement provides that work-related injuries sustained by Philippine nationals<sup>3</sup> employed by the United States on and after March 10, 1982 are covered under the Philippine compensation program.<sup>4</sup>

Appellant requested a review of the written record. He submitted copies of a 1988 motor vehicle operator's identification card, notifications of personnel actions dated 1983 and 1989, a portion of a document titled Collective Bargaining Agreement between the Federation of Filipino Employees Association and the United States Armed Forces in the Philippines, July 1982 (union agreement) and a 1984 compensation award to another employee who sustained an employment injury on May 19, 1977.

By decision dated July 21, 1999, an Office hearing representative affirmed the October 29, 1998 decision.

On July 7, 2000 appellant requested reconsideration. He argued that, if the Act did not provide coverage for civilian employees with injuries sustained after the 1982 Agreement, employees should not be required to sign an appointment affidavit which contains an oath of office. Appellant argued that foreign nationals deserved coverage under the Act, despite the 1982 Agreement transferring coverage to the Republic of the Philippines, because they had sworn an oath of allegiance to the United States Government. He further argued that the July 1982 union agreement provided for medical care for employees after the 1982 Agreement. Appellant stated that he was unable to obtain compensation for his medical condition from the Republic of the Philippines because the employing establishment failed to report his condition to that government's Employees' Compensation Commission (EEC) within three years of the injury.<sup>5</sup> He submitted copies of medical records, documents relating to an employee group health insurance plan, an identification card, pages from the Employees' Compensation and State Insurance Fund of the Republic of the Philippines, a 1989 certificate of recognition, a 1984 job

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<sup>2</sup> From March 1971 to September 1982 appellant worked as a mechanic and driver in the private sector.

<sup>3</sup> The record does not indicate that appellant was a United States citizen.

<sup>4</sup> A copy of this agreement was not made a part of the case record. The Board, however, takes notice of the agreement of March 10, 1982. *See Gregorio Llagas*, 37 ECAB 116 (1985).

<sup>5</sup> Appellant asserted that the employing establishment was responsible for reporting his condition to the EEC because it had taken chest x-rays in 1990 which revealed his respiratory problems.

description, copies of notifications of personnel action dated 1984 to 1988, an employment history and appointment affidavit for another employee and a publication article describing the United States presidential oath of office.<sup>6</sup>

By decision dated November 7, 2000, the Office denied modification of its October 29, 1998 decision.

Appellant requested reconsideration. He argued that the employing establishment violated Rule XVI, section 3, of the Philippine ECC regulations when it failed to report his 1990 respiratory disease to the ECC office. Appellant stated that, due to the employing establishment's negligence in failing to file his claim within three years of his 1990 date of injury, his entitlement to compensation from the Philippine Government was barred. He stated that under ECC Rule XVI, section 5, the employing establishment was required to provide 50 percent of an employee's lost wages if an injury was not timely reported. Appellant submitted copies of pages from the ECC regulations, pages from a publication concerning the Military Bases Agreement of 1947, as amended in 1983 and copies of newspaper articles about toxic waste on military bases.

By decision dated April 25, 2001, the Office denied modification of its November 7, 2000 decision.

#### **LEGAL PRECEDENT**

On March 10, 1982 the United States entered into an agreement with the Republic of the Philippines.<sup>7</sup> Effective that date, this Agreement transferred coverage for employment injuries sustained by Philippine nationals employed by the United States from the Act to the Philippine Medical Care Program and the Philippine Employees' Compensation Program. Paragraph four of this agreement provides as follows:

“This agreement will replace coverage for Philippine national employees of the U.S. Forces granted by 5 [U.S.C.], [s]ection 8137 [of] the Act. Claims for injuries

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<sup>6</sup> Some of the evidence was previously of record.

<sup>7</sup> Agreement on Employees' Compensation and Medical Care Programs, March 10, 1982, United States-Philippines, 34 U.S.T. 312, T.I.A.S. No. 10358 (hereinafter, the 1982 Agreement or the Agreement). *See Gregorio Llagas, supra* note 4 at 117.

and occupational diseases contracted prior to the effective date of the agreement may continue to be filed under the [Act] in accordance with its provisions.<sup>8</sup> Claims regarding exposures subsequent to the effective date of this agreement shall be filed under the Philippine Employees' Compensation Program.”

The last sentence of paragraph eight of the 1982 Agreement provides that “[a] dispute, disagreement, claim or grievance initiated by a Philippine employee of the U.S. Forces shall be settled in accordance with procedures established under or in accordance with applicable Philippine law.” Thus, claims for injuries and occupational diseases sustained subsequent to the effective date of the 1982 Agreement must be filed under the Philippine Employees' Compensation Program.<sup>9</sup>

The Board has consistently held that the date of injury in occupational disease claims, where exposure continues over a period of time, is the date of the employee's last exposure to the employment factors which are implicated in causing the disease.<sup>10</sup> The Board has affirmed this doctrine in connection with other cases involving the 1982 Agreement.<sup>11</sup>

### ANALYSIS

Appellant began working for the employing establishment on August 30, 1983. He stopped working on October 1, 1990. Thus, his earliest exposure occurred after August 30, 1983 and his last possible exposure to the implicated employment factors for his occupational disease and hence the date of injury occurred on October 1, 1990. Accordingly, for purposes of applying the 1982 Agreement, appellant's injury occurred after the March 10, 1982 effective date of the Agreement. By the terms of the 1982 Agreement, his claim is cognizable under the Philippines Employees' Compensation Program, rather than under the Act. Consequently, the Office's denial of his claim under the Act was proper.<sup>12</sup> Appellant has not provided any evidence to

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<sup>8</sup> 5 U.S.C. § 8137 provides for payment of compensation to employees and their dependents, who are neither citizens nor residents of the United States or Canada. Under subsection (a) the Office may adopt the substantive features of local workers' compensation systems or establish a special schedule of compensation and may modify these benefits at any time. Pursuant to this authority, the Office has promulgated regulations with respect to the Republic of the Philippines, set out in 20 C.F.R. § 25.200 (2000), as the Philippines Special Schedule (the Special Schedule), that applies to claims which are not precluded by the 1982 Agreement. The Philippines Special Schedule provides coverage under the Act for injury or death only for Philippine employees of the United States military who are not covered under the Philippine Medical Care Program and the Employees' Compensation Program, pursuant to the 1982 Agreement and who are not members of the Philippine Social Security System. 20 C.F.R. § 25.200(a). The record does not establish that appellant meets the criteria for coverage under the Special Schedule.

<sup>9</sup> *Rustico F. Rimando*, 37 ECAB 745 (1986); *Gregorio Llagas*, *supra* note 4 at 117.

<sup>10</sup> *Rustico Rimando*, *supra* note 9.

<sup>11</sup> *Gregorio Llagas*, *supra* note 4.

<sup>12</sup> *Gregorio Llagas*, *supra* note 4. The Board notes that appellant's argument that the employing establishment should provide compensation because it violated regulations of the Philippine workers compensation commission is not an issue that is within the Board's jurisdiction. The Board has jurisdiction to consider and decide appeals only from final decisions of the Office arising under the Act. *See* 20 C.F.R. § 501.2(c).

establish that his injury was sustained prior to the 1982 Agreement. Therefore, he is not a civil employee under section 8137 of the Act and is not entitled to compensation under the Act.<sup>13</sup>

**CONCLUSION**

The Board finds that appellant's claim does not fall within the jurisdiction of the Act.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated April 25, 2001 is affirmed.

Issued: July 8, 2005  
Washington, DC

Alec J. Koromilas  
Chairman

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

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<sup>13</sup> Appellant submitted a portion of a document titled Collective Bargaining Agreement between the Federation of Filipino Employees Association and the United States Armed Forces in the Philippines, July 1982. However, the portion of the agreement he submitted merely provided that health plans and services were available to employees through private contractors. This agreement does not involve the 1982 Agreement or the Act. Appellant also submitted copies of medical records, identification cards, notifications of personnel actions dated between 1983 and 1989, a 1984 job description, a 1989 certificate of recognition, group health insurance plan documents, a designation of beneficiary form, his job appointment affidavit with oath of office, a portion of the Employees' Compensation and State Insurance Fund of the Republic of the Philippines, an employment history and appointment affidavit for another employee, a 1984 compensation award to another employee who sustained an employment injury on May 19, 1977, pages from a publication concerning the Military Bases Agreement of 1947, copies of newspaper articles about toxic waste on military bases and a published article on the United States presidential oath of office. None of this evidence establishes that his claim falls within the jurisdiction of the Act.