Wisniewski, Alex

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NEW JERSEY DEPARTMENT OF LABOR AND INDUSTRY
DIVISION OF WORKMEN'S COMPENSATION
Claim Petition No. D 24954

ALEK WISNIEWSKI, :

Petitioner, :

v. : DISMISSAL (AFTER TRIAL)

JOHNS-MANVILLE CORPORATION, :

Respondent. :

A formal petition having been entered in the above matter, asking for compensation under the provisions of the Workmen's Compensation Law of this State, and an answer having been duly filed by respondent, the same came on for hearing before me at Somerville, New Jersey, on January 26, 1959, the petitioner being represented by Seymour S. Weinblatt, Esq., and the respondent by Wharton, Stewart & Davis (John W. Fritz, Esq. appearing).

Petitioner maintained that he was suffering from the effects of pulmonary fibrosis and emphysema resulting from his employment with respondent. The respondent's answer constituted general denial and included an allegation that the claim was barred by the statute of limitations.

It was stipulated that the petitioner had been employed by the respondent and had retired on March 1, 1958, his wages on retirement being $74.80 per week.

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The petitioner testified that while he had been employed by the respondent for fourteen years, sometime in 1949 he had been transferred from the Production Plant to the Research Building located at least a half mile from the Production Plant. Petitioner further testified that there was no exposure to deleterious dust since his employment at the Research Building.

Respondent then moved for a judgment of dismissal on the ground that this claim was barred by the statute of limitations.

Having considered the pleadings, stipulations of counsel, and evidence offered, I do find and determine that the petition was not filed within five years after the date on which the employee ceased to be exposed, if at all, in the course of employment with the employer, to the occupational disease alleged. Under the circumstances, it is unnecessary for me to determine whether exposure existed prior to 1949, and, if so, whether it resulted in the occupational disease alleged, and whether there is resultant disability, inasmuch as the petition was not filed within the time limited by statute. After consideration of all the proofs, I find that the petition must, therefore, be dismissed.

At the conclusion of the trial, I made certain observations and findings which were recorded and which are made a part hereof as if herein fully set forth.

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It is, therefore, on this 2ND day of MARCH, , 1959, ORDERED that the claim petition herein be and hereby is dismissed and that judgment be entered in favor of the respondent and against the petitioner.

Stenographic fee to be paid by respondent.

Horace Prioletta
Deputy Director

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IMPORTANT CLAIM PETITION FOR [illegible]

vs.

[illegible]ville Corporation

Respondent

[illegible] Seymour S. Weinblatt
(Attorney for Petitioner)

[illegible] Ferguson
[illegible]ville, N.J.
(Address)

TO THE DIVISION OF WORKMEN'S COMPENSATION:

Petitioner, alleging that he sustained an injury by accident arising out of and in the course of his employment with the above-named respondent, compensable under R.S. 34:15-7, et seq., and amendments and supplements thereto, respectfully states:

1. Name Alex Wisniewski
2. Residence Address 210 South 10th Avenue, Manville, New Jersey
(Street Address) (City)
3. Sex Male 4. Age 65 5. Marital status Married 6. Occupation Laborer
(Married, single)
7. Name of employer Johns-Manville Corporation
(a) Address Manville, New Jersey
(b) Business Manufacturing Asbestos Products
8. Did employer have notice or knowledge of injury? [illegible] notice given by Wife of the [illegible] On what date?
9. Place of accidental injury Respondents Plant Date Disabled [illegible]
10. Describe the accident During course of employment with respondent, [illegible]
Pulmonary Fibrosis and emphysema
11. Date petitioner stopped work March 1, 1958 Date returned to work Retired
12. Describe extent and character of injury If there has been amputation or loss of use [illegible] of member, or impairment of any physical function, explain fully [illegible]
emphysema
13. Wages or earnings $72.10 Compensation paid: Rate
Temporary disability None? Permanent disability None paid
14. Was medical aid required? Yes Was employer requested to furnish same? [illegible]
Was it furnished? Yes If so, between what dates? June 9, 1958 to date
If not, what sum was expended?
15. Give names and addresses of physicians and hospitals [illegible] Medical Group [illegible]

(over)

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16. What other facts are there which you believe important?

Your petitioner therefore prays that the Division of Workmen's Compensation will determine the amount of compensation due your petitioner from said respondent, under Revised Statutes of New Jersey, Title 34, Chapter 15, and the Acts supplemental thereto and amendatory thereof, and that your petitioner may be awarded his costs in this proceeding, and such other or further relief as may be proper.

(Petitioner)

STATE OF NEW JERSEY,
COUNTY OF _____ } ss.

_____, of full age, being duly sworn according to law, on his oath deposes and says: That he is the petitioner named in the foregoing petition; that he has read the same and is familiar with the contents thereof; and that the matters and things therein set forth are true according to the best of his knowledge and belief.

(Petitioner)

Subscribed and sworn to before me, this _____ day of _____, 19____, at _____

(This affidavit may be sworn to before any person authorized to administer an oath)

TO THE RESPONDENT:

The foregoing claim petition has been presented by the petitioner to the Division of Workmen's Compensation for hearing and determination. Unless an answer in duplicate is filed within ten days after the service of this petition and notice, with the Secretary of the Division, in the State House at Trenton, the petitioner will proceed with proof of claim according to law.

DIVISION OF WORKMEN'S COMPENSATION

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Exh. C. 1

CONFIDENTIAL

[illegible], 1958

Re. Alex Wisniewski (retired)
#1224 - Research Center

EMPLOYMENT HISTORY: Iron moulder in a foundry, Newark, New Jersey - 10 years. Laborer for Reading Railroad, Hamilton, New Jersey - 1919 to 1922. Hired by Johns-Manville in 1922. From 1922 to 1949 was slack-box man in Magnesia Department. From 1949 to date of retirement was janitor at the Research Center. Had 27 years of potential exposure to Diatomaceous Earth and Asbestos Fibre.

PAST MEDICAL HISTORY: June, 1949 - Pleurisy right lower lung. Out of work for 10 days. November 20, 1954 - employee fainted at Research Center while pushing buggy. Nurse at the Medical Department noted very labored and wheezing respirations. Sent home under care of family doctor. November 22, 1954 - examined by Dr. DuBow and allowed to return to work. Stated to Dr. DuBow that 3 years previously had had a similar attack of shortness of breath and had remained at home for 2 weeks. Dr. DuBow found numerous rhonchii at right lung base and some retraction of the anterior chest wall. Rhonchii also present at left base. Moderate dyspnea at rest. Out of work from May 4, 1956 to September 4, 1956 - under care of Dr. Gobel. Chief complaints were pain in the chest and radiating down the right arm. Dr. Gobel's diagnosis was coronary insufficiency. His last complete periodical physical examination was done August 30, 1956. Temperature - 98.0°. PR - 78 per minute. Weight - 191 lbs. BP - 140/86. Heart sounds were of fair quality. There were frequent extra systoles. No murmurs. Crepitant rales were heard at both lung bases. Light Work restrictions were recommended and following return to work, he was re-evaluated several times: 1956, 1957 and 1958. His last examination-evaluation at the Medical Department was on February 17, 1958. This time he stated that he occasionally got short of breath and felt some chest pain in cold, damp weather. He was taking some medication. Objectively he appeared mildly dyspneic. RR - 24 per minute at rest. There was no cyanosis or edema. PR was 86 per minute. Heart sounds were of fair quality. Fairly frequent extra systoles present. Pre-systolic murmur present. Crepitant rales and some sibilant rhonchii during expiration were heard at both lung bases. Liver and spleen were not palpable.

HISTORY OF PRESENT COMPLAINTS: Present complaints are not known.

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OF CHEST X-RAYS:

5/5/32 - Small infiltration in right first anterior interspace. Discrete calcific density in left lower lung. Left hilar shadow prominent. Left costophrenic angle rather shallow.
1/29/40 - No change.
3/23/44 - No change.
6/7/45 - No change.
7/8/48 - A diffuse exaggeration of linear markings has occurred. Right costophrenic angle is hazy and shallower. Outlines of diaphragms have a fuzzy appearance. Left costophrenic angle is increasingly shallow.
7/30/48 - Diffuse hazy density in lower third of right lung and evidence of pleural effusion at right base with marked lateral wall thickening in lower right lung.
7/11/50 - Complete clearing of the pleural effusion and hazy infiltration at right base. Some minimal lateral wall thickening at right base remains. Other findings noted are still present.
7/28/52 - No change.
8/3/54 - Both costophrenic angles are increasingly obliterated. Left diaphragm is becoming elevated and straightened Outlines of diaphragms are increasingly fuzzy due to fine granular and linear densities at the lung bases.
8/31/56 - No change.
9/5/56 - No change.
8/13/57 and 8/14/57 - Infiltrations noted in right 1st and 2nd anterior interspaces. Diffuse linear exaggeration. Bilateral prominence of hilar shadows. Two discrete calcific densities noted at lst lung base. Diffuse fine linear densities noted at both lung bases. Both costophrenic angles are shallow and the diaphragms are flattened. Diaphragms move ½ inch between inspiration and expiration.

COMMENT: Physical and X-ray examination of Mr. Wisniewski show evidence of intrinsic lung disease. Lung biopsy might confirm the nature of the disease. In addition, there is a history of coronary artery insufficiency as well as physical evidence of heart disease. Studies by the Cardio-Pulmonary Laboratory would be necessary for a more precise determination of the nature and extent of any impaired pulmonary function. It is suggested that his chest X-rays be reviewed by Drs. Kenneth Smith and Leonard Bristol, followed by a clinical and X-ray evaluation by Dr. Joseph Smith.

L. D. Merrill

L. D. Merrill, M.D.
Medical Department

EDM:eg