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THE REFEREE: The claimant is present and represented by Ted Oot, Mr. Langford appears for the State Fund, Mr. James Elliot appears for the Prudential, Mr. Wilson appears for the 15-8 ee Special Funds, we also have a Disability Benefits case traveling herewith. First, what is your position on this case, Mr. Langford, as far as the Compensation case?

MR. LANGFORD: This case is controverted on the grounds of occupational disease, causal relationship. Employment was terminated due to economic conditions. He applied for Unemployment Insurance Benefits and is not totally disabled. Mr. T emiti, Mr. Oot would like copies of those letters. Can I have 'em back and copy 'em now?

THE REFEREE: I would like

MR. LAMGFORD: For that matter, we can copy 'em.

it in the file.

THE REPEREE: All right, in the claimant's Disability Benefits case, what is your position, Mr. Elliot?

MR. ELLIOT: As I said before, it's based on Section 206 subdivision 2 of the

HC HEPPEY SK1 -74

MR. ELLIOT, CONT'G: Workmen's Compensation Law.

When a Compensation case is controverted on grounds other than causal relationship, the Disability Benefits Carrier is not obligated to pay. The danger is that we would pay Misability Benefits for someone not disabled and not be able to be reimbursed.

THE REFEREE: Isn't that
the same situation you have in any non-occupational
disability? You are not reimbursed in all nonoccupational disability cases.

MR. ELLIOT: If the Compensation case should be found he was not totally disabled, we would not have paid any how. We do not pay.

agree the definition of total disability under the Compensation Law is different than total disability under ability under the Disability Benefits Law?

MR. ELLIOT: You suggest

they are the same?

MR. OOT: What medical evidence do you have that indicates that this man is not totally disabled?

MR. ELLIOT: We have the

MC HEFFEY 8-1-74

MR. ELLIOT, CONT'G: same medical evidence you have.

This man was laid off May 23rd, was able to work.

MR. OOT: Nedical evidence,

I am asking you?

THE REFEREE: Gentlemen!

We'll do this a step at a time.

MR. WINSTON A. MC HEFFEY, THE CLAIMANT, BEING DULY SWORN, TESTIFIES AS FOLLOWS:

BY THE REFEREE:

- Q. Mr. Mc Heffey, what is your home address?

 A. 138 Grove Street.
- Q. And the Social history that we have that was taken by our Social Service and I'll indicate this to you and you indicate to me whether it's correct or not. You served with the United States Marines during World War II, is that correct?

A. Right.

Q. And that in 1946 you worked for Brown Lipe Chapin in Syracuse as a buffer?

A. Yes.

- Q. And, you worked with chrome?

 A. Um hum.
- Q. And 1947 to 1949 you worked for Kinney Drug Company as a truck driver?

A. Yes.

Q. From 1949 to 1952 you worked for Mc Dowell Construction Company at Benson Mines as an engineer's helper, is that correct?

A. Yes.

Q. What kind of work did you do?

A. I helped the engineer do surveying.

Q. On the surface or underground?

A. On the surface.

Q. Then, our information indicates from 1953 to May of 1974 you worked for International Tale, is that correct?

A. Yes.

Q. And that you worked in Mill #5 in Hailesboro and you were a packerman there for 2 years?

A. Yes.

Q. And you worked in Mill #2 in Fowler and you were a roustabout for a year?

A. Yes.

Q. You worked at Mill #3 and you were a mill operator for 15 years?

A. Yes.

Q. You worked at Mill #2 as a maintenance man and packerman?

A. Yes.

- Q. And you worked in Mill #3 as a machine operator?
 A. Yes.
- Were these all underground?A. No, all in the mill.
- A. On operating the mill, I run the machinery, run big cylinders and wheeler machines and alpine machines. On maintenance, we did everything in the mill, all kinds of repair work on all the machinery, dust collectors and separators and on the packing, well that is packing on a hand packer. That is about it.
- Q. Was this an exposure to dust?A. Yes.
- Q. What kind of dust were you exposed to?

 A. Fine dust.
- What is the nature of the dust? What kind of material were you working with?

A. Fibers.

- Q. Well, what is the name of the material?

 A. Talc.
- And you worked there approximately what, 15 yearsdid you go more than that, 21 years?

A. 21 years.

- Q. When were you born?
 - A. November 18, 1923.
- Q. What is your present age?
 - A. I will be 51 in November.
- Q. And how far did you go in school?
 - A. Third year highschool.
- Q. Did you have any trade other than what you had at International Talc?
 - A. No.
- Q. When did you leave International Talc?

 A. Well, I was on vacation. I left the 18th of May.
- Q. And what caused you to leave?
 - A. Well the shut they shut the mill down.
- Q. How were you advised?
 - A. Well, I was advised on the street. I was on vacation, they told me the mill had sold out.
- Q. Did you bother to go to the mill after that?

 A. I went up.
- Q. What did they tell you?
 - A. Get my personal things and all.
- Q. Did they-well, did they ever send you a letter to the effect that your services were no longer required?

A. Yes, I got a letter on it.

- Q. What did the letter say?
 - A. I can't remember offhand, they said the mill had sold out.
- Q. What did you do after you left International Tale?

 A. Well, I went up to see a Doctor.
- Q. What Doctor?

A. Dr. Adler.

MR. WILSON: May we have

the date, please?

- Q. The information I have in the Workmen's Compensation Board file indicates that the first medical report by Dr. Adler was a C-48 dated 6-10-74 which indicates he saw the claimant on 6-3-74. What did Dr. Adler tell you?
 - A. He told me I was totally disabled, never work again.
- Q. Did you apply for Unemployment Insurance?

 A. Before I had an interview at Vanderbilt, Gouverneur Talc they called me for an interview. They said they would make an appointment for me to see

 Dr. Dodds the next day. In the meantime I had these X-rays so the next morning my wife works at the hospital and Dr. Dodds went in and told her

MR. MC HEFFEY, CONT'G: he read the X-rays. He said call your husband and tell him to forget it, he can't work any more.

- Q. Where is Vanderbilt?
 - A. He was the Doctor up there at Vanderbilt.

 I had the papers from Dr. Dodd too. So then I come back and went through Disability.
- Q. Did you apply for Unemployment Insurance?

 A. Yes, I did.
- Q. What did they tell you at Unemployment Insurance?

 A. She turned me down, mid I wasn't eligible

 for it.
- Q. Then you applied for Disability Benefits?

 A. Yes.
- Q. What did Disability Benefits say?

A. They turned me down too.

THE REFEREE! Mr. Oot?

BY MR. OOT, ATTORNEY FOR THE CLAIMANT

- Q. What is there about yourself that bothers you at the present time?
 - A. Well, I ain't got no breath. I'm tired out all the time.
- Q. How about when you walk?
 - A. I can't even walk uptown, it's 2 blocks to the village and I can't walk it.

- Q. How long have you been tired? When did you first notice that?
 - Q. I started about last year.
- Q. And, let's assume you walk along the level, what happens to you?
 - A. Well, I just get tired out. I can't walk too far, is all.
- Q. And, you say that you were examined by Dr. Dodds at the Gouverneur Talx?
 - A. He didn't exactly examine me. He read the X-rays.
- Q. He rejected you?
 - A. He rejected me, yes.
- Q. You worked for 21 years in and around Talc?

 A. Right, yes.

MR. OOT: No further questions.
THE REFEREE: Mr. Langford?

BY MR. LANGFORD, APPEARING FOR THE STATE FUND

- Q. Have you applied for Social Security Mr. No Heffey?

 A. Yes, I did.
- Q. Did you go in the Marine tight after you got out of school?
 - A. I went to school right in there.
- Q. And then, after you got out of the Marines, what

MC HEFFEY 8-1774

MR. MC HEFFEY, THE CLAIMANT

MR. LANGFORD, CONT'G: did you do at Brown Lipe

Chapins, as a buffer?

A. Yes.

- Q. You operated a machine?

 A. Yes.
- Q. And you drove a truck?

 A. Right.
- Q. Tractor trailer?

 A. No, just straight body truck.
- Q. And tell us a little bit more about what you did as an engineer's helper?
 - A. All I did was help the engineer, hold the tape for him and did do measuring.
- Q. Did Dr. Adler tell you, you can't do any work at all or did he tell you you can't work in the mines any more?
 - A. He said never, he told me on the paper, never.
- Q. Never to the regular work?

MR. OOT: Never work!

A. Never work again, is what he told me.

MR. LANGFORD: I have no

further questions.

THE REFEREE: Mr. Wilson?
MR. WILSON: No questions.

THE REFEREE: Mr. Elliot?
BY MR. ELLIOT, APPEARING FOR PRUDENTIAL INSURANCE

Q. I am wondering why you never saw a Doctor about the condition before you were laid off?

A. I never felt bad.

Evidently, you could work with this condition?

MR. OOT: I object to that
as being immaterial!

THE REFEREE: Go ahead.

A. I probably would have kept on working if the mill hadn't sold out.

MR. ELLIOT: That is what we felt too. I reiterate our position, Section 206-2 that the Compensation Carrier controverted this case on other than causal relationship! It may be determined that this man is not totally disabled, the Prudential would not be reimbursed and - (Interruption)

THE REFEREE: Mr. Langford, you are not raising the issue that he was not exposed to talc?

MR. LANGFORD: No, sir.

THE REFEREE: In other words,

you concede that there was talc exposure here?

MR. LANGFORD: Yes, sir.

MR. ELLIOT: I think the

dispute is over total disability or partial disability. Prudential has no liability for partial
disability!

THE REFEREE: I have the Disability case before me. I have the report of Dr. Adler which was submitted to the Disability Benefits Carrier which indicates that as of 5-24-74 this claimant was totally disabled. Again, for the record, the claimant, under the Disability Benefits Law is totally disabled when he is unable to perform the type of work that he was going. This claimant was denied Unemployment Insurance because of the fact that he was no longer able to work. Therefore, under the Disability Benefits Law, I make a finding that the claimant is authorized Disability Benefits within the meaning of the New York State Disability Benefits Law and he is totally disabled, pursuant to that Law. The Disability Benefits case is closed.

MR. OOT: May I make an application for a fee in this case?

THE REFEREE: This case is

13

THE REFEREE, CONT'G: to travel with67406724. Your fee on this?

MR. 00T: \$150.00.

THE REFEREE: A fee of

\$100.00 to attorney Thaddeus Oot to be a lien on the award.

MR. ELLIOT: May I note for the record that Prudential objects as a matter of law, on the basis of the Workmen's Compensation Law, we have no liability!

THE REFEREE: And in the Workmen's Compensation case, decision will be.

Case to be processed in accordances with the Workmen's Compensation Law rules and regulations pertaining thereto in pneumoconiosis cases for an examination by the State Expert Chest Consultant.

August 13, 1974

This is to certify the foregoing is a true and correct, transcription of the testimony.

Hearing Reporter

STATE OF NEW YORK WORKMEN'S COMPENSATION BOARD

Hearing Point:

CANTON, NEW YORK

Date of Hearing: December 10, 1975

WINSTON A. MCHEFFEY

Claimant

INTERNATIONAL TALC CO., INC.

Employer

Case No. #67406724

THE STATE INSURANCE FUND

Carrier

HEARING BEFORE THE WORKMEN'S COMPENSATION BOARD

EMITI, REFEREE PRESENT:

Susan A. Lyman Hearing Reporter

APPEARANCES:

Winston McHeffey, claimant, present.
Attorney Thaddeus Oot, representing the claimant, present.
Mr. Richard Langford, representing The State Insurance Fund, present.
Mr. Francis Nelson, representing the Special Funds Conservation Committee, present.

WITNESSES:

Dr. Ernest Adler.....

THE REFEREE:

Winston McHeffey.

The claimant is present. Mr. Oot appears for the claimant, Mr. Langford appears for State Fund. Mr. Nelson appears for 15-8 EE. This case is on the Board calendar pursuant to a direction from the Workmen's Compensation Board for the testimony of Dr. Adder. Dr. Adder is present.

DR. ERNEST ADLER, BEING DULY SWORN, TESTIFIES AS FOLLOWS:

BY THE REFEREE:

- Q. May I have your full name?
 - A. Ernest (E-R-N-E-S-T) L. Adler.
- And doctor, would you give us a brief background of your medical training and experience?
 - A. Graduated from the University of Glessen Germany Medical School. Internship in Glessen in Berlin. 1938 came to the United States, took my State Board. Became licensed in the State of New York. 1938 and '39 I worked as a resident at Will Rodgers Memorial Hospital in Saranack Lake and in 1939 I located in Gouvernaur and I began practice here.
- Q. Your authorized to treat cases under the New York State Compensation Law?
 - A. I am.

- And your coding is an X is that correct?
 - A. Yes.
- Doctor, in the course of your practice did you have the occasion to treat the claimant, Winston McHeffey?
 - A. Yes, I did.
- Q. Would you tell us when you first saw him?
 - A. I first saw him on June 3rd, 1974.

THE REFEREE:

You may question,

Mr. oot.

BY MR. OOT:

- Q. And doctor, he's been under your care since, has he?
 A. Yes.
 - When did you last see him?
 - A. Just a few days ago.

THE REFEREE:

In other words,

he's still under your care?

A. Yes, I just saw him within the last week.

THE CLAIMANT:

Last Friday.

- And doctor, you obtained a history from him in the course of your treatment?
 - A. Yes.
- And what was the history you obtained?
 - A. That he had been -- In 1974 he had been working in talc dust, exposed to talc dust for 21 years and

that during the past months or year he has noticed increasing shortness of breath, especially on exertion.

And doctor, he had certain complaints when you saw

A. Yes.

Q. What were his complaints?

A. Shortness of breath, tightness in his chest, increasing shortness of breath after the least exertion.

- Q. And doctor, did you arrive at a diagnosis?
 - A. Yes.
- 2. And what did you diagnose the claimant's condition as?
 - A. Pneumoconiosis.
- Q. And doctor, did you arrive at any other diagnosis as far as the heart is concerned?
 - A. Yes, I suspected at first that he had also coronary artery disease, arteriosclerotic heart disease. Although initial X-rays showed the heart to be within normal limits, but his symptoms were such that I suspected arteriosclerotic heart disease.
- Q. What were the symptoms or complaints that he had that led you to that conclusion?
 - A. This tightness in his chest which came on by

spurts.

- And doctor did you form an opinion with a reasonable degree of medical certainty as to whether or not this arteriosclerotic heart disease was in any way affected by the pneumoconiosis?
 - A. Yes, we know that any resistence in the pulmonary circulation aggravates any pre-existing arteriosclerotic heart disease.
- Q. Was that the case here?
 - A. I think so.
- Q. And now dector, did you form an opinion with a reasonable degree of medical certainty as to whether or not the pneumocomiosis is causally related to his employment in the talc industry for 21 years?
 - A. Yes, definitely.
- Q. What was your opinion?

Q.

Q.

- A. That he was definitely disabled due to pneumoconiosis, due to the exposure of tale dust.
- And doctor, did you form an epinion with a reasonable degree of medical certainty as to the degree of his disability as a result of this condition?
 - A. I fell he's totally and permanently disabled.

 And doctor, is this total and permanent disability

 due to the complications of the pneumoconiosis and

it's effect upon the coronary artery disease?

A. Yes, it is.

MR. OOT:

I have no

further questions.

THE REFEREE:

Mr. Langford.

BY MR. LANGFORD:

- Doctor, you said you had first suspected that he had afteriosclerotic heart disease. Has this been confirmed?
 - A. Yes, by later examinations by Dr. Maxon, I believe I'm not sure, in Albany and later on by Dr. Nash in Syracuse.
- Q. Dr. Maxon confirmed the heart disease?
 - A. I'm pretty sure. He didn't mention it in his report but he, in his opinion, he mentioned the diastolic blood pressure is elevated and should be monitered which is an indication that there was some trouble but he didn't express it.
- Q. There is no place in Dr. Maxon's report that he indicates there is arteriosclerotic heart disease?
 - A. Only the mentioning of the elevation of the diastolic blood pressure, but he didn't mention it.
- Q. Doctor, in your opinion could Mr. McHeffey do some light or sedentary work?
 - A. My experiences with these people is no.

.cHeffey - 12-10-75

From a medical point of view they can do no work?
I'm asking for your medical opinion, doctor.

A. If you have seen several of these patients and talked to them and realized that they have difficulty in breathing and talking to you, I feel that their job they are able to do is to keep themselves breathing and in a comfortable position.

MR. LANGFORD:

I have no

further questions.

BY THE REFEREE:

Q. Doctor, had you ever seen him prior to 6-3-74?

A. I think so.

THE CLAIMANT:

Yes, I went in

172.

THE REFEREE:

I want the doctor

to answer.

- A. I don't have his private records but I have known him.
- Q. What were you treating him fon generally, prior to this?
 - A. I didn't treat him for -- (Interruption)
- Q. (Interrupting) In other words, were you treating
 him for other illness of the body or for cardiovascular
 disease, for pulmonary disease as far as you know?
 - A. Not before '74.

Q. Is he your regular patient?

A. Yes.

THE REFEREE:

Transcribe

6 . . .

minutes. Reserve decision. And fir. Adler, where do

you reside?

DR. ADLER:

209 East Main

Street, Gouverneur, New York.

THE REFEREE:

That is how

far from here?

DR. ADLER:

22 Miles, is it.

THE REFEREE:

That will be a

fee of \$75 to Dr. Adler plus \$20 travel time.

MR. OOT:

Mr. Referee,

in this case I respectfully request the case be sent to the Syracuse Calendar for the testimony of Dr. Nash.

THE REFEREE:

Again I would

respectfully deny your request since the Board Decision is solely for the testimony of Dr. Adler.

McHeffey - 12-10-75

December 22, 1975

The foregoing is certified to be a true and correct transcript of the testimony.

Hearing Reporter

-8-

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Journal Occup Med. 15, 92, 1973. (Talc: A Possible Occupational and Environmental Carcinogen)

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