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**The Employer
Advisory**

Employment Case Analysis You Can Use

**EMPLOYER PREVAILS IN OCCUPATIONAL DISEASE CASE
BY RELIANCE ON CT SCAN**

Allan Docksteiner worked as a coal miner for 25 years. During that time, Docksteiner sought treatment from his family doctor, Dr. Larry Jones, for his breathing problems. For 16 years, Dr. Jones repeatedly found that Docksteiner's lungs were clear and placed him on an exercise routine.

In 1993, the Peabody Coal Company mine at which Docksteiner was working closed. Docksteiner complained that he was having difficulty breathing. He was still seeing Dr. Jones but Dr. Jones never diagnosed any lung disease. Docksteiner never returned to work as a miner.

In 1997, Docksteiner's attorney suggested that he see Dr. William Houser, a board certified pulmonary specialist. Dr. Houser examined Docksteiner only once and he took x-rays of his chest. Dr. Houser diagnosed Docksteiner with coal worker's pneumoconiosis (CWP), chronic obstructive pulmonary disease (COPD), hypertension and heart disease. He opined that the CWP was related to Docksteiner's occupational exposure to coal dust for 25 years and that the CWP would have been present at the time Docksteiner left his job with Peabody.

Docksteiner filed a claim against Peabody under the Illinois Occupational Diseases Act. Peabody hired Dr. Jerome Wiot, a professor of radiology, to interpret the x-rays taken by Dr. Houser. Dr. Wiot found no evidence of CWP. Peabody also retained Dr. Peter Tuteur, a board certified internal medicine and pulmonary disease specialist, to examine Docksteiner. Dr. Tuteur ordered a CT scan and a pulmonary function study. After reviewing the results of all the tests, Dr. Tuteur found no evidence of CWP.

Docksteiner retained Dr. Michael Alexander, a board certified diagnostic radiologist and certified pneumoconiosis B reader, to review the 1997 chest x-ray. Dr. Alexander compared Docksteiner's x-rays with International Labor Organization standard x-ray films. Using this objective standard, Dr. Alexander found that Docksteiner suffered from CWP and thickening of the chest wall.

The arbitrator found in favor of Docksteiner stating that he had been continually exposed to coal dust while working as a miner was entitled to the presumption that his CWP arose out of his employment. Docksteiner and Peabody both sought review of the arbitrator's decision. The

Commission reversed the arbitrator and denied Docksteiner benefits. The Commission found that Docksteiner failed to prove disablement as a result of an occupational disease within two years of his last date of exposure as required under the Illinois Occupational Diseases Act. The Commission specifically relied on the opinion of Dr. Tuteur that Docksteiner did not have CWP. The Commission found Dr. Houser's 1997 opinion that Docksteiner suffered from CWP on his last day of work in 1993 to be speculative.

Docksteiner appealed to the circuit court which confirmed the Commission. He then appealed to the appellate court. Docksteiner claimed that the Commission should not have relied on the CT scan used by Dr. Tuteur in formulating his opinion because CT scans were not ordinarily used to detect CWP. Unlike x-rays, CT scans are viewed subjectively and not against any particular industry standard. The court held that Docksteiner waived any objection to the use of CT scans because he did not raise the issue at arbitration. The Commission's reliance on Dr. Tuteur's opinion was not against the manifest weight of the evidence and affirmed the lower court's decision.

Docksteiner also contended that the two year disablement period provided for in Section 1(f) of the Occupational Diseases Act was inapplicable to CWP because it conflicts with Section 6(c) of that Act granting miners five years after the last exposure to file a claim. The Court held that while a miner has five years from his last exposure in which to file a claim, he must have become disabled within two years of his last exposure in order to recover on that claim.

Cases involving contradictory medical opinions are often decided on the basis of which medical expert has the most experience and the best credentials. Employers should consult with legal counsel when selecting independent medical examiners. The courts will defer to the Commission in most cases with contradictory medical opinions. In occupational disease cases, the claim must be filed within two years of disablement or it is time barred.

Docksteiner v. Industrial Comm'n., No. 5-03-0150WC, (5th Dist. Ill.), February 20, 2004.