

Mathis, Donald

OCCUPATIONAL DISEASE (RCW 51.08.140)

Successive insurers

Where the worker has been subject to two distinct exposures to cedar dust during the course of employment with two different employers, the first self-insured and the second insured with the state fund, and the cedar dust asthma which developed as a result of the first exposure had resolved and had become asymptomatic prior to the second exposure, the worker has two distinct occupational disease claims for the same condition and the financial responsibility for the reoccurrence and progression of his asthma resulting from the second exposure should be borne by the second employer (i.e, the state fund) and not by the self-insured employer. ...***In re Donald Mathis, BIA Dec., 58,195 (1982)***
[Editor's Note: See WAC 296-7-870(7) regarding apportionment of financial responsibility for occupational disease claims among state fund employers.]

Scroll down for order.

1 period, Donald Mathis worked for the self-insured employer, Evans Products, was off work, worked
2 briefly at a grocery store where he was not exposed to cedar dust, and then worked for Eddie Albert
3 Quick where he was again exposed to cedar dust. Because he was attending physician during this
4 critical period, Dr. Mullarkey is in the best position to form opinions regarding the relationship
5 between claimant's cedar dust-induced asthma and employment with Evans Products Company
6 and Eddie Albert Quick. In addition, Dr. Mullarkey's opinions are entitled to great weight in view of
7 his qualifications which include certification and fellowship in national professional societies for
8 doctors specializing in internal medicine, allergy and immunology.
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13 The clear import of Dr. Mullarkey's testimony is that Mr. Mathis, as a result of a cedar dust
14 allergy, developed asthma during the course of his employment with Evans Products Company.
15 Following his termination with Evans Products on November 6, 1978, claimant's asthmatic condition
16 resolved and would have remained essentially asymptomatic had he continued to work at the
17 grocery store. Finally, it was the doctor's opinion that claimant's subsequent exposure to cedar
18 dust during his employment with Eddie Albert Quick caused the claimant's asthma to become
19 worse and symptomatic.
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24 Consideration of the testimony analyzed in the Proposed Decision and Order and the
25 opinions expressed by Dr. Mullarkey leads us to the conclusion that claimant has two compensable
26 occupational disease claims. Mr. Mathis developed asthma as a result of exposure to cedar dust
27 during the course of his employment with Evans Products Company, and said company is
28 responsible for any benefits attributable to exposure occurring on or before November 6, 1978.
29 Following termination of employment with Evans Products, claimant in late 1978 became
30 asymptomatic and his condition attributable to cedar dust exposure during his employment at
31 Evans Products Company had resolved. Evans Products' responsibility for claimant's asthmatic
32 condition terminated at the end of 1978 when he became asymptomatic. As a result of subsequent
33 exposure to cedar dust while working for Eddie Albert Quick, claimant's asthmatic condition has
34 reoccurred and progressed to the point that it was significantly more disabling and difficult to treat
35 than it had been during his employment with Evans Products Company. Any benefits accruing as a
36 result of claimant's exposure to cedar dust subsequent to his employment in the grocery store
37 should be the responsibility of Eddie Albert Quick.
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45 The parties in briefs and memorandums have referred to a number of Decisions and Orders
46 issued by the Board dealing with the apportionment of responsibility for occupational diseases
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1 between self-insured employers and the state fund. While we believe that the principles as set forth
2 in Harry S. Lawrence, Dec'd, Docket No. 54,394 (1980), Forrest Pate, Docket No. 58,399 (1982),
3 Winfred E. Hanninen, Docket No. 50,653 (1979), and Delbert Monroe, Docket No. 49,698 (1978),
4 are correct, we also believe that those principles simply are not applicable to the facts of this
5 appeal. In each of the appeals alluded to, the claimant suffered from a condition which had
6 progressed over a number of years while engaged in continuous employment in which the harmful
7 exposure existed. There were no discreet incidents followed by resolution of symptoms as there is
8 here, but rather a continuation of exposure over a period of time during which the employer was
9 initially covered by the state fund and then subsequently became self-insured. In this appeal, we
10 have two clearly delineated exposures to cedar dust giving rise to the occupational disease of
11 asthma, which exposure periods were produced no asthmatic condition.

12 Careful consideration of the Proposed decision and Order, review of the entire record before
13 us, and consideration of the petitions for review lead us to the conclusion that the Department's
14 order of November 21, 1980 should be reversed in order to assign responsibility to the responsible
15 employers for claimant's separate conditions attributable to his separate exposures during the
16 course of his employment with both Evans Products Company and Eddie Albert Quick. The
17 occupational condition resulting from Mr. Mathis' exposure to cedar dust while employed with
18 Evans Products Company prior to November 6, 1978, gives rise to a compensable claim for an
19 occupational disease which is the responsibility of that company. The condition attributable to
20 cedar dust exposure during the claimant's employment by Eddie Albert Quick which commenced in
21 December of 1978 should be the responsibility of that employer.

22 **FINDINGS OF FACT**

23 Based upon a careful review of the entire record, this Board finds as follows:

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- 25 1. On January 22, 1979, the claimant herein, Donald E. Mathis, filed a
26 report of accident wherein he alleged the occurrence of an industrial
27 injury resulting from cedar dust inhalation while employed by Quick
28 enterprises, dba C and K Shake Mill. This claim was assigned Claim
29 No. H-459060. On July 7, 1979, the claimant herein Donald E. Mathis,
30 filed a second report of accident against Quick Enterprises, alleging an
31 occupational disease incurred on October 16, 1978 while the claimant
32 was employed by Quick Enterprises, dba C and K Shake Mill. This
33 claim was assigned Claim No. H-599586. Both claims were accepted
34 and time loss and medical payments were made with state funds on
35 behalf of Quick Enterprises. On August 22, 1979 the Department issued
36 an order directing the Claim No. H-459060 against Washington Shake
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1 be allowed as an industrial injury as an aggravation of a pre-existing
2 condition. On August 24, 1979, a representative of Washington Shake
3 sent a letter to the Department of Labor and Industries, which was
4 interpreted as a protest and request for reconsideration of the August
5 22, 1979 Department order.
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7 On November 26, 1979, Sid Willuweit of the Department of Labor and
8 Industries sent a memorandum to the Fred S. James Company, on
9 behalf of self-insured employer, Evans Products, notifying the Fred S.
10 James Company that both claim numbers H-459060 and H-599586
11 were to be handled as self-insured claims, to be assigned to Evans
12 products. On March 18, 1980 Fred S. James, on behalf of Evans
13 Products, notified the claimant that it had been assigned both claims
14 and that the first time-loss payment would be paid by the self-insured
15 employer for the time period beginning November 23, 1979. On June
16 30, 1980 Fred S. James, administrator for the self-insured employer,
17 notified the Department that it was requesting denial of the claim
18 because the claimant was not disabled at Evans Products, so there was
19 no compensable claim as to Evans Products. On June 30, 1980, the
20 self-insured employer informed the claimant that the company was
21 denying the claim on the basis that the claim was not timely filed with
22 the self-insured employer, nor was it a compensable occupational
23 disease.

24 On November 21, 1980, the Department issued an order allowing the
25 claim number S-330114 against Evans Products, the self-insured
26 employer, as an industrial injury. On December 1, 1980, the Board of
27 Industrial Appeals received a notice of appeal, filed on behalf of the self-
28 insured employer, from the Department order of November 21, 1980.
29 On December 11, 1980, the self-insured employer filed an amended
30 notice of appeal with the Board of Industrial Insurance Appeals. On
31 December 31, 1980, the Board issued its order granting the appeal,
32 subject to proof of timeliness because the order appealed from was not
33 available at that time. The appeal was assigned Docket No. 58,195. On
34 April 10, 1981, the claimant moved to join Eddie Quick, dba C and K
35 Shake Mill, as a party to the appeal. On April 16, 1981 Industrial
36 Appeals Judge Henry W. Huntsman issued an order joining Eddie Albert
37 Quick, dba C and K Shake Mill, as a party to this appeal.

- 38 2. Evans Products Company's notice of appeal filed on December 1, 1980,
39 was filed within 60 days of the date on which the Department's order of
40 November 21, 1980 was communicated to said company.
- 41 3. As a direct and proximate result of exposure to cedar dust during the
42 course of his employment with Evans Products Company from April 1,
43 1976 through November 6, 1978, the claimant, Donald E. Mathis,
44 developed a condition diagnosed as cedar dust asthma.
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- 1 4. Subsequent to November 6, 1978 and prior to commencing employment
2 with Eddie Albert Quick, dba C and K Shake Mill (also referred to herein
3 as Washington Shake Mill) in December of 1978, claimant was not
4 exposed to cedar dust and his occupational disease of cedar dust
5 asthma contracted as a result of his exposure to cedar dust at Evans
6 Products Company resolved and became symptom-free; and brief other
7 employment during this period produced no asthma condition.
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- 9 5. As a result of cedar dust exposure between April 1, 1976 and November
10 6, 1978, claimant contracted a disabling occupational condition
11 diagnosed as cedar dust asthma which required medical treatment.
- 12 6. Claimant, Donald E. Mathis, at the time he commenced employment
13 with Eddie Albert Quick, dba C and K Shake Mill, was symptom free,
14 required no medical treatment for cedar dust asthma, and was not
15 suffering any disability as a result of that condition.
- 16 7. Claimant, Donald E. Mathis, as a result of exposure to cedar dust while
17 in the course of employment with Eddie Albert Quick, dba C and K
18 Shake Mill, from and after December 1978, contracted a condition
19 diagnosed as cedar dust asthma which condition was disabling and
20 required medical treatment.
- 21 8. Claimant, Donald E. Mathis, was not advised until approximately June
22 15, 1979 by a physician that his asthma was causally related to
23 exposure to cedar dust during the course of employment.
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CONCLUSIONS OF LAW

25 Based upon the foregoing findings of fact, this Board concludes as follows:
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- 27 1. The Board of Industrial Insurance Appeals has jurisdiction of the parties
28 and the subject matter of this appeal.
- 29 2. Claimant contracted a compensable and disabling occupational disease
30 within the meaning of the Workers' Compensation Act while engaged in
31 the course of his employment at Evans Products Company.
- 32 3. Claimant contracted a compensable and disabling occupational disease
33 within the meaning of the Workers' Compensation Act while engaged in
34 the course of his employment with Eddie Albert Quick, dba C and K
35 Shake Mill, also herein referred to as Washington Shake Mill.
- 36 4. Claimant filed timely applications for benefits relative to the occupational
37 condition contracted as a result of exposure to cedar dust during the
38 course of his employment with both Evans Products Company and with
39 Eddie Albert Quick, dba C and K Shake Mill, also herein referred to as
40 Washington Shake Mill.
- 41 5. The self-insured employer, Evans Products Company, is fully financially
42 responsible for any benefits attributable to the claimant's exposure to
43 cedar dust on and prior to November 6, 1978, but such responsibility
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1 terminated with claimant's employment by Eddie Albert Quick in
2 December of 1978.

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4 6. Eddie Albert Quick, dba C and K Shake Mill, also herein referred to as
5 Washington Shake Mill, is fully financially responsible for all benefits
6 attributable to the occupational condition arising out of the claimant's
7 exposure to cedar dust subsequent to his employment with said
8 employer in December of 1978.
- 9 7. The order of the Department of Labor and Industries dated November
10 21, 1980 is incorrect and will be reversed, and this claim will be
11 remanded to the Department with direction to enter an order allowing
12 under Claim No. S-330114, a claim for the occupational disease
13 diagnosed as cedar dust asthma against Evans Products Company, a
14 self-insured employer, for all benefits attributable to the claimant's
15 exposure prior to November 6, 1978 and for no benefits subsequent to
16 the claimant's employment by Eddie Albert Quick in December of 1978;
17 to allow under Claim Nos. H-459060 and H-599586 which are to be
18 consolidated, claimant's occupational disease diagnosed as cedar dust
19 asthma resulting from claimant's exposure to cedar dust during the
20 course of his employment with Eddie Albert Quick, dba C and K Shake
21 Mill, and to charge said employer with responsibility for all benefits
22 attributable to cedar dust exposure subsequent to employment in
23 December of 1978; that following allowance in each of these claims, the
24 Department shall take such further action as may be authorized or
25 indicated by law.

26 It is so ORDERED.

27 Dated this 30th day of August, 1982.

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30 BOARD OF INDUSTRIAL INSURANCE APPEALS

31
32 /s/
33 MICHAEL L. HALL Chairman

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35 /s/
36 FRANK E. FENNERTY, JR. Member

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38 /s/
39 PHILLIP T. BORK Member