FILE NAME: National Gypsum (NG)

DATE: 1966

DOC#: NG037

DOCUMENT DESCRIPTION: Worker's Compensation Case Judgment

NEW JERSEY DEPARTMENT OF
LABOR AND INDUSTRY
Division of Workmen's Compensation
MORRIS COUNTY DISTRICT

PETER PAUL ARMENTI,

Petitioner,

vs.

NATIONAL GYPSUM CO., INC.,

Respondent.

- - - - - - - - - - - - - - - - -x

CLAIM PETITION C-8103

IN THE MATTER OF THE APPLICATION OF PETER PAUL ARMENTI FOR BENEFITS FROM THE ONE PER CENT FUND

- - - - - - - - - - - - - - - - -x

JUDGMENT AND ADVISORY REPORT

As to eligibility for benefits fr
One Percent Fund.

APPEARANCES: FRANK J. O'BRIEN, Esquire, Attorney for Petitioner, John W. Devlin, Esquire, appearing;

JAMES J. CARROLL, E quire, Attorney for Respondent, Eugene C. Galvin, Esquire, appearing;

GRACE J. FORD, Esquire, Assistant Deputy Attorney General, representing Commissioner Raymond F. Male, trustee of the One Per Cent Fund.

STATEMENT OF AWARD

ASSESSED AGAINST RESPONDENT:

10% of partial total on the basis of 450-week schedule, 45 weeks at $30.00 amounting to	$ 1,350.00
Less $70.00 previously erroneously paid	70.00
	$ 1,230.00 (Due and

The respondent is to reimburse the petitioner $100.00 upon presentation of a receipted bill for his confinement in the Morristown Hospital in 1962

$ 100.00

The respondent is further to reimburse the petitioner for any medication paid for by him in connection with his pulmonary condition upon presentation of receipted bills.

Dr. Max Singer for his examination and appearance	$ 40.00
Frank J. O'Brien, Esquire, petitioner's attorney, counsel fee	$ 150.00
Stenographic fees	$ 12.50

ASSESSED AGAINST THE PETITIONER:

Dr. Saul Lieb, 804 Clinton Avenue, Newark, for two examinations and reports	$ 70.00
Dr. Max Singer for examination and report	$ 40.00
Frank J. O'Brien, Esquire, Attorney for petitioner, counsel fee	Counsel fee waived

The petitioner, Peter PaulArmenti, Sr., filed a Claim Petition Number C-8103 alleging therein that he "was in the employ of the respondent on 9/6/1926 to 6/1956 during which period he was exposed to dust, including asbestos dust, causing petitioner to contract asbestosis of both lungs."

The matter came on for hearing before the Honorable Horace Prioletta, Deputy Director (now Judge of Compensation), and he adjudicated the matter in favor of the petitioner and entered a judgment on January 27, 1959, which, inter alia, contained the following determination: "The permanent disability resulting from the accident is pulmonary asbestosis in nature, and the extent thereof I find and determine to be 66 2/3% of partial total." (Exhibit P-1 in evidence.)

The judgment was fully paid, and the last payment thereon was made on July 11, 1963. The pulmonary condition from which the petitioner has been suffering progressed after the entry of the judgment, and the petitioner filed an Application for Review or Modification of Formal Award on August 22, 1963.

On June 1, 1965, the petitioner filed a verified petition with the Honorable Raymond F. Male, Director (Commissioner) of the Department of Labor and Industry of the State of New Jersey, in accordance with the provisions of N. J. S. A. 34:15-94 et seq.

On March 21, 1966 both the Application for Review or Modification of the Formal Award and the Application for benefits under the One Per Cent Fund as heretofore set forth came on for hearing before me at 3 Schuyler Place, Morristown, New Jersey.

I am satisfied from the evidence presented that the compensable pulmonary condition has worsened and therefore the pulmonary disability is increased but not to the extent where this condition alone is responsible for his total and permanent disability. The increased disability, in my opinion justifies a modification of the Formal Award previously entered to the extent of an increase of 10 per cent of his total and permanent disability.

Since the evidence supports the finding that the petitioner is now totally and permanently disabled and unemployable as a result of the combined effects of both the pre-existing cardiovascular condition in combination with the compensable pulmonary condition, the conclusion seems inescapable and the circumstances presented that the respondent should be charged only with the pulmonary disability resulting from his exposure in the employment.

I also find and determine that the petitioner has succeeded in bringing himself within the class of totally and permanently disabled persons "as a result of experiencing a subsequent permanent injury under conditions entitling such persons to compensation therefor, when such persons had previously been permanently and partially disabled from some other cause" as contemplated by Revised Statutes 1937, 34:15-94 and 34:15-95, together with all subsequent amendments and supplements thereto.

I also find as a fact that the statutory mandate has been complied with, N.J.S.A. 34:15-95-1, in that the Verified Petition was filed in duplicate with theCommissioner of Labor and Industry and that the petitioner has established, by a preponderance of the evidence, his eligibility for the One Per Cent Fund benefits as provided by law providing, however, that prior to commencement of payment from the One Per Cent Fund and thereafter, the petitioner shall submit himself to such further examinations and interviews as may be required to establish his continued total and permanent disability.

Petitioner's eligibility shall not entitle him to payments under the One Per Cent Fund until the award entered in this proceeding against the National Gypsum Co., Inc., has been paid and, in any event, not before June 1, 1965, the date petitioner filed his application for One Per Cent Fund benefits as hereinabove set forth.

It is also recommended that payments continue after the 450-week period aforementioned expires in accordance with N.J.S.A. 34:15-12(b), subject to such reconsiderations and extensions as the case may require and subject to the provisions of the Workmen's Compensation Act of New Jersey.

I also order that upon request of the petitioner, the respondent furnish such treatment as may be required for his compensable pulmonary condition.

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

Pursuant to such findings, Judgment is entered in accordance with the above STATEMENT OF AWARD.

Pursuant to the provisions of R. S. 34:15-64, as amended, it is directed that amounts to be deducted for the petitioner's expenses are to be paid to the persons entitled to the same, the remainder to be paid directly to the petitioner.

Samuel S. Ferster
Judge of Compensation

Dated: April 27, 1966.

9/19/63 D-14

DEPOSITION EXHIBIT 68

...SC — APPLICATION FOR REVIEW OR ...IFICATION ...FORMAL AW...

...NAL FILED
ALL-STATE OFFICE SUPPLY CO
502 HIGH ST., NEWARK 2, N. J.

STATE OF NEW JERSEY
DEPARTMENT OF LABOR AND INDUSTRY
DIVISION OF WORKMEN'S COMPENSATION

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District
Pet. Atty.
Server

APPLICATION FOR REVIEW OR MODIFICATION OR FORMAL AWARD
(R. S. of N. J. 34:15-27)

Peter Paul Armenti,

Petitioner,

vs.

National Gypsum Co., Inc.,

Respondent.

Self-insured
(Insurance Company)
Frank J. O'Brien
(Attorney for Applicant)
1015 Park Ave., Plainfield, N. J.
(Address)

TO THE DIVISION OF WORKMEN'S COMPENSATION:

Peter Paul Armenti (petitioner) in Claim Petition No. **C-8103**
(Name)

hereby makes application to the Division of Workmen's Compensation to review the Order entered **January 27, 1959**
(Date)

by **Judge of Workmen's Compensation Horace Prioletta**

and alleges that the disability of **Peter Paul Armenti**
(Name of Injured)

(State manner in which disability has terminated or manner and extent it has increased or diminished)

increased as follows: **petitioner is completely and totally disabled and is unable to work,**

PLAINTIFF'S EXHIBIT NG 108a

and in support thereof the following facts are stated: **petitioner's condition has worsened; he is totally disabled.**

Date of Injury **9/8/26 to 8/1/56**
(Month, Day and Year)

If award has been fully paid state date of last payment **July 26, 1963**
(Month, Day and Year)

If not, is compensation being paid? **No**

CE#A 401530