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July 28, 1960

Mr. Paul J. Drugan
Legal Section
Bureau of Workmen's Compensation
Columbus 15, Ohio

Dear Mr. Drugan:

Re: Henry N. Hoerst
Claim No. 107910 OD

Reference is made to your letter dated July 25, 1960 referring to an Application for Compensation for total disability due to asbestosis filed by the captioned claimant.

Hoerst is still employed by The Philip Carey Manufacturing Company and there have been no arrangements made by him with his employer relative to when he will cease his employment. Accordingly the company cannot agree that he is totally disabled during the time he is employed.

With reference to the employer approving the claim for disability due to asbestosis I wish to advise that the employer is not opposing the claimant's contention that he is seriously disabled but will not approve a claim for disability due to asbestosis for the following reason. Your records indicate that claimant was off work from June 12, 1957 to October 28, 1957 due to heart attack and prostrate operation and not because of asbestosis. "Claimant's Report of Occupational Disease" reflects that his lungs and heart were affected by asbestosis. You will note that the report of Dr. Ralph C. Scott, dated March 1, 1960, states that in his opinion Mr. Hoerst has extensive pulmonary fibrosis which, on the basis of the history of exposure is most probably due to asbestosis. You will also note that although Dr. Scott did not comment on this phase of his examination in his opinion, the Electro-cardiogram for claimant revealed a serious heart condition.

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It appears that the claimant is seriously disabled and will eventually be considered totally disabled. However it also appears his disability will be due to the lung and heart condition which, in all probability, has been caused by his exposure to asbestos.

You can readily understand why it is important to the employer that if it is the claimant's heart and lung condition that is causing his disability then any claim approved should reflect these reasons rather than asbestosis. I believe that Dr. Scott and the Commission doctors will agree that on the basis of Dr. Scott's examination the claimant is as disabled from his heart attack as from any other reason.

You will note that claimant was allowed to return to work with The Philip Carey Company on October 28, 1957 with the knowledge that he was experiencing difficulty with his heart. I feel this action on the part of the employer was carrying out the spirit of Section 4123.343 of the Workmen's Compensation Act and accordingly the employer intends to seek the relief afforded by this section.

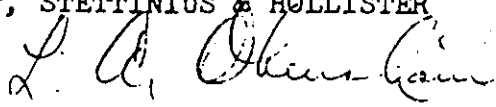
It therefore becomes important that if and when a finding of permanent and total disability is made in this case one of the major causes of claimant's disability be because of his heart regardless of what caused this condition.

I am suggesting, with your approval, that the claimant be allowed to amend his application for total disability to reflect his disability as resulting from a heart and lung disease. I will appreciate hearing from you in this regard.

Yours very truly,

TAFT, STETTINIUS & HOLLISTER

By


L. A. Obenshain

LAO:mz