

STATE OF MONTANA
DEPARTMENT OF LABOR AND INDUSTRY
HEARINGS BUREAU

BILLY GENE STANFORD,)	Case No. 641-2009
)	
Petitioner,)	
)	FINAL AGENCY DECISION
vs.)	
)	
DEPARTMENT OF LABOR AND)	
INDUSTRY,)	
)	
Respondent.)	

* * * * *

I. INTRODUCTION

In this matter, the personal representatives of the estate of Billy Gene Stanford have appealed a determination of the Montana Department of Labor and Industry that Billy Gene Stanford was not entitled to silicosis benefits under Mont. Code Ann. 39-73-104.

Hearings Officer Gregory L. Hanchett conducted a hearing in this matter on December 16, 2009. Tamara Carey appeared on behalf of the estate of Billy Gene Stanford. Mark Cadwallader, agency legal counsel, appeared on behalf of the Department of Labor and Industry. Pursuant to the parties's agreement, this matter was submitted on stipulated facts, Department of Labor and Industry Exhibits 1 through 7, Petitioner's Exhibits A through K, and the arguments of the parties at the time of hearing. Based on the exhibits and arguments made at hearing, the hearings officer makes the following findings of fact, conclusions of law and order.

II. ISSUE

Was Stanford totally disabled as a result of silicosis such that he was entitled to silicosis benefits under Mont. Code Ann. §39-73-104 and Mont. Code Ann. § 39-73-101(4)?

II. FINDINGS OF FACT

1. Billy Gene Stanford applied for silicosis benefits on August 1, 2007.
2. At the time of his application for benefits, Stanford had resided continuously in Montana for a period of ten years.
3. Pursuant to Stanford's application, in September 2007, Keith M. Popovich, MD., conducted medical testing to ascertain the cause of Stanford's lung ailments.
4. After conducting the tests, Dr. Popovich, opined that Stanford's lung disease was "largely obstructive." Exhibit 3. Dr. Popovich further noted that "it would be difficult to assess whether there is a contributing component of fibrosis /restriction." *Id.*
5. As a result of Dr. Popovich's findings, the department denied Stanford's request for silicosis benefits on October 24, 2007. On July 29, 2008, the Department upheld the denial of silicosis benefits after completing an administrative review of the October 24, 2007 decision.
6. Stanford died on May 12, 2009 in Butte, Montana.
7. On May 12, 2009, shortly after Stanford's death, David Repola, MD, conducted an autopsy at the request of Stanford's family. The autopsy revealed that there was "significant emphysema present" in Stanford's lungs. Attachment 5, page 2. The autopsy also revealed that "[T]here is no significant interstitial fibrosis" in the lungs. *Id.* Dr. Repola also noted that "that there were two small silicotic -like nodules present;" however, "these changes are not sufficient for a diagnosis of silicosis." *Id.*

IV. DISCUSSION

The petitioner bears the burden of proving that Stanford was entitled to silicosis benefits. A person is eligible for silicosis benefits where the person demonstrates that he (1) "has silicosis . . . that results in the person's total disability so as to render it impossible for the person to follow continuously any substantially gainful occupation," (2) has resided in Montana for the ten years or more immediately preceding the date of application for benefits," and (3) "is not receiving compensation under [Mont Code Ann.§] 9-71-115." Mont. Code Ann. § 39-73-104. The term "silicosis" is defined as "a fibrotic condition of the lungs due to inhalation of silica dust." Mont. Code Ann. § 39-73-101(4).

There is no dispute in this case that Stanford was a resident for ten years immediately preceding his application for benefits and that he was not receiving benefits under Mont. Code Ann. § 39-71-115. Rather, the issue in this case boils down to whether there is adequate evidence to demonstrate that Stanford's condition resulted from silicosis, a fibrotic condition of the lungs due to the inhalation of silica dust. The substantial medical evidence in this matter, the opinions of Dr. Popovich and Dr. Repola, demonstrates conclusively that no such conclusion can be drawn. In the absence of some competent medical evidence that Stanford's disability was the result of silicosis, the hearings officer is constrained to find that Stanford was not entitled to silicosis benefits under Mont. Code Ann. § 39-73-104.

V. CONCLUSIONS OF LAW

1. Stanford resided in Montana as a resident for the ten years immediately preceding his application for silicosis benefits.
2. Stanford was not being compensated under Mont Code Ann. § 39-71-115 at the time of his application.
3. The petitioner has failed to demonstrate by a preponderance of evidence that silicosis, a fibrotic condition of the lungs due to the inhalation of silica dust, resulted in Stanford's total disability.

VI. ORDER

Based on the forgoing, the Petitioner's application for silicosis benefits is denied as there has been no showing that Stanford's disability resulted form silicosis.

DATED this 11th day of January, 2010.

DEPARTMENT OF LABOR & INDUSTRY
HEARINGS BUREAU

By: /s/ GREGORY L. HANCHETT
Gregory L. Hanchett
Hearing Officer

NOTICE OF APPEAL RIGHTS: This Order constitutes the final agency action in this matter. A party wishing to seek judicial review of this decision must file an appeal in Montana District Court, 2nd Judicial District (Butte-Silver Bow) within 30 days of the date of the mailing of this decision as provided in Mont. Code Ann. § 2-4-702 and Admin. R. Mont. 24.29.215(3).