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WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

MARTIN FRANCO,

Case No. VNO 0479008

Applicant

vs.

FINDINGS AND ORDER

CITY OF LOS ANGELES, CAMBRIDGE

Defendants.

LEWIS, MARENSTEIN, WICKE & SHERWIN
BY KARIN V.L. GOMEZ, attorneys for applicant


KEGEL, TOBIN & TRUCE BY PREETI SHAH,
Attorneys for defendants

The above-entitled matter having been heard by and submitted for decision to
the Honorable Barry R. Goldman, Workers' Compensation Administrative Law Judge,
decision is made as follows:

ORDER

IT IS ORDERED that Applicant take nothing by his application for benefits in
this matter

DATED: 4-25-05


BARRY R. GOLDMAN
WCALJ

Service by mail on parties
as shown on the Official Address
Record.

BY: 

MARTIN FRANCO
CAMBRIDGE

VS.

CITY OF LOS ANGELES;

WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE:

P65
BARRY R. GOLDMAN

DATE OF INJURY:

JULY 08, 1996 TO JUNE 19, 2003

OPINION ON DECISION

Based upon a review of medical reports and documentary evidence, this court finds that Applicant has failed to prove an industrial injury in this matter. This court has based its findings upon three factors:

1. Applicant has not proven exposure to asbestos even if asbestos was found at applicant's work location during construction. The asbestos abatement rules which were in place in 1992 and 1998 would limited outside exposure to deminimus amounts.
2. The mechanism of injury caused by asbestosis exposure is through the respiratory system. No evidence of respiratory disease was presented in this case. At the very least applicant should have developed plunal plaquing from such exposure but none was shown in this case. Mesotheliama is the only known cancer caused by asbestos exposure and to speculate that it caused Applicant's colon cancer because there is no other explanation for someone getting cancer at his young age is valueless in establishing an industrial injury even with the present cancer presumption.
3. The known latency period for cancer development from asbestos exposure is 15 to 20 years based upon the defense medical report of Dr. James Padova the only oncologist specialist in this matter.

This court has had prior medical evaluators indicate lesser latency periods of 7 to 12 years. Even these latency periods would preclude a link between Applicant's exposure and his cancer. Applicant was exposed in 1997/1998 and he first developed symptoms in mid 2002, a period of close to five years.

Even considering the cancer presumption given to Police Officers and accepting a carcinogenic exposure occurred in this case, this court cannot find an industrial injury. The type of carcinogen exposure alleged in this case does not cause colon cancer and the latency period for a cancer fiber to travel through the body and trigger a cancer is too great.


BARRY R. GOLDMAN
WCALJ