

PAUL BENNETT v. KANSAS CITY POWER & LIGHT

We represented Kansas City Power & Light (KCPL) in this alleged asbestosis claim. Bennett worked at two KCPL plants between 1970 and 2002. He alleged exposure to asbestos and other contaminants, including dust, coal dust and chlorine resulting in pulmonary problems and disability. Bennett smoked for many years but testified that he quit smoking in 1990.

Bennett's medical evidence consisted of two reports, one from a pulmonologist who opined that he was permanently and totally disabled as a result of a combination of asbestos exposure at work and his smoking history. The other report was from an occupational medicine physician who found PTD as a result of occupational exposure at KCPL alone. The deposition of the pulmonologist was taken. He admitted his opinion was based solely on what Bennett had told him. He did not do any air quality studies or view any reports of such.

Our medical evidence was from a pulmonary expert as well. He found claimant to be permanently and partially disabled, 10 percent BAW due work exposure to asbestos and 10 percent BAW due to pre-existing smoking history. His report was admitted by way of the 60 day rule.

At trial, Bennett was the only "live" witness. The administrative law judge did not allow him to testify that there was "asbestos" in the plant. He could testify that he observed a white powdery substance on the floor and that he worked in areas where there was a white, powdery substance. He testified he saw a bag labeled "asbestos" and that plant meetings were held to talk about asbestos. He testified that parts of the plant were partitioned off to remove asbestos, per what KCPL told their employees, but he was not in or around those areas when the removal occurred. He testified that there was coal dust, a sulfur smell and a chlorine smell at the plants and that he was not required to wear any type of mask. Bennett retired after pulmonary restrictions were placed upon him in 2002.

The Administrative Law Judge found that Bennett did not meet his burden to prove that he was exposed to asbestos or other contaminants at the work place. Based on various cases, the judge ruled that a two step process is involved in an alleged exposure case. First, the employee must prove there was exposure to the disease which was greater than or different from that which affects the public generally and second, employee must prove that there was a recognizable link between his alleged exposure and some distinctive feature of his job which was common to all jobs of that sort. The judge found that no independent studies were performed by any expert hired neither by the employee nor by any physician who saw or treated the employee. Rather, the expert opinions were based solely on Bennett's representations to them that he was exposed to asbestos and other contaminants at work. Nor did Bennett put forth any evidence of a direct causal connection between the conditions under which his work was performed and the alleged occupational disease.

The judge used the strict construction language in the statute which could be problematic although our position is that, regardless of whether the statutes are construed strictly or more liberally, Bennett did not prove actual exposure nor did he prove any link between his alleged exposure and his type of employment.

The case has been appealed to the Labor & Industrial Relations Commission. We will keep you updated on the details of this case. Should you have any questions, please don't hesitate to contact an Evans & Dixon attorney.