

## MEDICAL ISSUES

### Resolution R15-1-01

#### **Modification of R96-1-01 and R03-1-02 related to medical evidence necessary to support a claim for an asbestos-related condition**

**September 28, 2015**

WHEREAS, pursuant to the provisions of R.C. 4123.68, before awarding compensation for disability or death due to silicosis, asbestosis, or coal miners pneumoconiosis, the Administrator is to refer the claim to a qualified medical specialist for examination and recommendation with regard to diagnosis, extent of disability or cause of death, or other medical questions connected with the claim; and

WHEREAS, under R.C. 4123.68 all conditions, restrictions, limitations and other provisions of R.C. 4123.68 with reference to the payment of compensation and benefits on account of silicosis or coal miners pneumoconiosis apply to the payment of compensation and benefits on account of any other occupational disease of the respiratory tract resulting from injurious exposure to dust; and

WHEREAS, Ohio Adm.Code 4121-3-09(A)(1) provides that evidentiary proof shall be of sufficient quantum and probative value to establish the jurisdiction of the Commission to consider the claim and determine the rights of an employee to an award; and

WHEREAS, on February 26, 1996, the Commission adopted Resolution R96-1-01; and

WHEREAS, in State ex rel. Hubbard v. Indus. Comm., 96 Ohio St.3d 336, 2002-Ohio-4795, 774 N.E.2d 1206 it was stated that asbestosis is a disease caused by asbestos, and that asbestos is a fiber, not a dust; and

WHEREAS, mesothelioma is a cancer associated with exposure to asbestos; and

WHEREAS, it is recognized that there are other occupational diseases that are asbestos-related diseases that do not fit within the definition of asbestosis; and

WHEREAS, on March 5, 2003, the Commission modified Resolution R96-1-01 and adopted Resolution R03-1-02; and

WHEREAS, the Commission desires to modify Resolution R96-1-01 and R03-1-02 to set forth the policy of the Commission that certain medical evidence is necessary to be submitted by an injured worker prior to the referral of the claim to the Administrator for an examination by a qualified medical specialist pursuant to the provisions of R.C. 4123.68 concerning claims for asbestosis, as well as for claims for silicosis, coal miners pneumoconiosis, and claims for occupational diseases of the respiratory tract resulting from injurious exposure to dust, other than death claims; and

WHEREAS, the Commission desires to also modify Resolution R96-1-01 and R03-1-02 to set forth the policy of the Commission that certain medical evidence is necessary to be submitted by an injured worker prior to the adjudication of a contested claim, other than a death claim, filed for any asbestos-related occupational disease, other than mesothelioma, as well as for any occupational disease of the respiratory tract resulting from injurious exposure to dust; and

WHEREAS, pursuant to R.C. 4121.03(E)(1) the Commission is responsible for establishing the overall adjudicatory policy of the Commission under R.C. Chapters 4121, 4123, 4127, and 4131.

THEREFORE BE IT RESOLVED that Resolution R96-1-01 and R03-1-02 be modified to the extent that it is the policy of the Commission that, at a minimum, the following evidence is necessary to be submitted by the injured worker, in

claims other than death claims, prior to the referral of the claim to the Administrator for an examination by a qualified medical specialist pursuant to the provisions of R.C. 4123.68 concerning claims for asbestosis, as well as for claims for silicosis, coal miners pneumoconiosis, and for occupational diseases of the respiratory tract resulting from injurious exposure to dust, and at a minimum, the following evidence is also necessary to be submitted by an injured worker, in claims other than death claims, prior to the adjudication of a contested claim filed for any asbestos-related occupational disease, other than mesothelioma:

- A written interpretation of 1) x-rays by a certified "B reader" or 2) a high-resolution computed tomography.
- Pulmonary functions studies and interpretation by a licensed physician.
- An opinion of causal relationship by a licensed physician.

### **Modification**

This resolution was modified to correct citations and is effective on September 26, 2018.