

Secondhand Cigarette Smoke as a Compensable Occupational Exposure if Claim Filed in a Timely Manner

The Honorable Russell Wojtenko issued a decision in *Pulejo v. Middlesex County Consumers Affairs*, holding that the employee's exposure to secondhand cigarette smoke while employed contributed to his lung cancer or aggravated his pre-existing chronic obstructive pulmonary disease (COPD). The employee, however, failed to comply with the two-year statute of limitations to file his claim petition and the matter was dismissed.

This reserved decision, handed down on February 11, concluded that a non-smoking employee proved that his exposure to secondhand cigarette smoke from co-workers in an environment with poor ventilation significantly contributed to his condition. Nevertheless, the claim was dismissed as the employee had knowledge that his exposure to secondhand smoke contributed to his lung cancer or aggravated his pre-existing COPD years before he filed his claim petition.

The employee underwent a lung biopsy in December 2000, which found non-small cell carcinoma. Then on January 11, 2001, he had the upper- and mid-lobe of his right lung removed due to lung cancer. The employee testified that he consulted with an oncologist and thoracic surgeon in 2001 and advised both of his exposure to secondhand smoke at work. After these consultations, the employee believed "[m]ost likely cigarette smoke and whatever" caused the lung cancer. However, he did not file his claim petition until April 21, 2010. The Court found the claim should have been filed on or before January 11, 2003, two years from surgery on his right lung. The Court found the employee should have discovered the possibility of a claim after being a non-smoker, working in a smoking environment and developing lung cancer shortly after retiring.

The respondent did not raise the statute of limitation to argue that the employee was not entitled to workers' compensation benefits. However, the Court looked to a number of cases, included *Earl v. Johnson & Johnson*, to determine that a jurisdictional prerequisite to an occupational disease claim is the timely filing of the claim petition.

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