[J-56-2017] [MO: Donohue, J.]
IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

CITY OF PHILADELPHIA FIRE DEPARTMENT	:	No. 13 EAP 2017
	:	Appeal from the Order of Commonwealth Court entered on
v.	:	08/12/2016 at No. 579 CD 2015 vacating and remanding the Order entered on 03/13/2015 by the Workers'
WORKERS' COMPENSATION APPEAL BOARD (SLADEK)	:	Compensation Appeal Board at Nos. A13-1317 and WCAIS Claim No: 4037688.
APPEAL OF: SCOTT SLADEK	:	ARGUED: September 12, 2017

CONCURRING AND DISSENTING OPINION

JUSTICE WECHT **DECIDED: October 17, 2018**

I agree with the learned Majority's interpretation of Subsection 108(r) of the Workers' Compensation Act. As the Majority explains, claimants relying upon the presumption set forth in Subsection 108(r) need demonstrate only that they suffer from a type of cancer that is capable of being caused by a Group 1 carcinogen. Majority Opinion at 17; *see* 77 P.S. § 27.1(r). Because I agree that the Commonwealth Court's decision departed from the plain language of Subsection 108(r) when it added a workplace-exposure requirement that the General Assembly chose not to impose upon claimants,[1] I join Part I of the Majority opinion in full.

---

[1] *See City of Phila. Fire Dept. v. W.C.A.B. (Sladek)*, 144 A.3d 1011, 1021-22 (Pa. Cmwlth. 2016) (holding that Sladek was required "to prove that his malignant melanoma is a type of cancer caused by the Group 1 carcinogens **to which he was exposed in the workplace.**") (emphasis added).

Turning to the second issue before us, which concerns the City of Philadelphia's burden to rebut the presumption that Sladek's cancer was caused by his occupation, I would hold that an expert's general causation testimony regarding epidemiological studies if credited by a WCJ, may prove the required lack of causation. The Majority is, of course, correct that the City was obliged to produce substantial competent evidence showing that Sladek's particular case of malignant melanoma was not caused by his firefighting. But, logically, evidence showing that firefighting never causes malignant melanoma necessarily would establish that firefighting did not cause a particular occurrence of malignant melanoma.

The Majority suggests that allowing employers to rebut the presumption with general causation evidence would permit them to relitigate exactly what the claimant already has proven in order to invoke the presumption.[2] Not so. As the Majority correctly explains, a claimant can invoke the presumption set forth in Subsection 108(r) simply by demonstrating that he or she suffers from a type of cancer that is capable of being caused by a Group 1 carcinogen. Majority Opinion at 17. Surely an employer can introduce epidemiological evidence showing that firefighting-related exposures never cause the firefighter's specific type of cancer without also disputing that the firefighter's type of cancer is capable of being caused by one or more Group 1 carcinogens.

To illustrate, assume that a firefighter suffers from a type of cancer ("cancer X"), which everyone agrees can be caused only by the consumption of processed meat.

---

[2] Majority Opinion at 20 ("To reach the stage of the proceedings at which the employer attempts to rebut the presumption of employment-related causation, the claimant has already carried his or her Section 108(r) burden of proof that his or her cancer is of a type that may be caused by a Group 1 carcinogen. The employer may not rebut the evidentiary presumption merely by revisiting this determination and challenging its accuracy.").

The firefighter would have no problem invoking Subsection 108(r), since the International Agency for Research on Cancer ("IARC") has classified processed meat as a Group 1 carcinogen.[3] But the firefighter's employer easily could rebut the presumption—and prove that "the firefighter's cancer was not caused by the occupation of firefighting"—by introducing epidemiological evidence showing that cancer X is associated with processed meat consumption only, never with firefighting.

This is no silly hypothetical. It is essentially what happened in this case. Sladek invoked Subsection 108(r), hoping that it would allow the WCJ to presume that Sladek's firefighting caused his malignant melanoma. In response, the City's expert, Dr. Tee Guidotti, testified that all skin cancers have an etiologic connection with ultraviolet radiation, and that malignant melanoma is not caused by the inhalation of smoke (which contains arsenic and soot) or by the inhalation of any substance at all. The City also introduced a World Health Organization publication, which explained that "[i]ntermittent exposure to UVR [(ultraviolet radiation)] in white people, especially during childhood, has been postulated to be the main risk factor for the development of melanoma, although exposure in adulthood also plays a part." *City of Philadelphia Fire Dept. v. W.C.A.B. (Sladek)*, 144 A.3d 1011, 1018 (Pa. Cmwlth. 2016). I see no reason why evidence showing that firefighting *never* causes malignant melanoma, if credited by the WCJ, would not also constitute evidence that Sladek's particular occurrence of malignant melanoma was not caused by firefighting.

In sum, I would hold that: (1) occupational disease claimants can satisfy Subsection 108(r) by showing that they suffer from a kind of cancer that is caused by a

---

[3] *See* World Health Organization, *IARC Monographs on the Evaluation of Carcinogenic Risks to Humans*, vol. 114 (2018), https://monographs.iarc.fr/wp-content/uploads/2018/06/mono114.pdf (classifying processed meat as a Group 1 carcinogen).

Group 1 carcinogen; and (2) an expert-epidemiologist's general causation testimony may constitute substantial competent evidence that a firefighter's cancer was not caused by the occupation of firefighting.