

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F214006

JO ANN HEINZ, EMPLOYEE

CLAIMANT

**BAPTIST HEALTH CENTER - BRYANT, EMPLOYER
SELF-INSURED**

RESPONDENT

**CROCKETT ADJUSTMENT (TPA),
INSURANCE CARRIER**

RESPONDENT

OPINION FILED JULY 16, 2003

Hearing before Administrative Law Judge Dail Stiles on June 12, 2003, in Little Rock, Pulaski County, Arkansas.

Claimant represented herself Pro Se.

Respondents represented by Ms. Gail Ponder Gaines, Attorney at Law, Little Rock, Arkansas.

A hearing was held on June 12, 2003, to determine the compensability of the claim filed herein.

It was stipulated that the employer/employee relationship existed in January, 2000 and in August, 2002. The claimant's earnings were sufficient to entitle her to weekly indemnity rates of \$302.00 for temporary total disability and \$227.00 for permanent partial disability benefits.

The claimant contends that she developed respiratory problems as a result of inhaling chemical fumes at her work place from 1997 through at least January of 2000.

The claimant contends she is entitled to payment for past and ongoing medical charges related to her respiratory difficulties.

The respondents controvert the claim in its entirety contending that the claimant cannot demonstrate a causal connection between her complained-of respiratory difficulties and her work activities either in January, 2000 or in August of 2002.

STATEMENT OF THE CASE

The claimant worked as an x-ray technician for the respondent. The claimant testified that she began working for the respondent some time in 1997.

Among her other duties, the claimant took x-rays of patients and then developed the film. The claimant stated that some time in 1997 she started experiencing some shortness of breath and tightness in her chest when she would work around the chemicals used to develop the x-ray film.

The claimant said that in January, 2000, she had a respiratory attack for which she sought medical attention.

The claimant testified that she actually had started seeking some medical attention for respiratory difficulties in 1999 but characterized the January, 2000 respiratory difficulties as an "attack." She brought her respiratory problems to the attention of someone in a supervisory capacity in January of 2000, although, a claim for benefits was not filed at that time.

The claimant said that she attended a seminar in the summer of 2002, and at that point decided that the chemicals used to develop the x-ray films was what was causing and triggering her asthma and respiratory attacks and difficulties.

The claimant filed a claim for workers' compensation benefits with her employer in August of 2002.

A review of the medical evidence reflects that the claimant was treating with Dr. Jeff Mayfield as early as November of 1999. Dr. Mayfield was one of the physicians for whom claimant worked in the respondent clinic. Dr. Mayfield stated in an November 18, 1999 office note that the claimant had presented to him for evaluation of chest tightness, sinus pressure and drainage. Dr. Mayfield initially diagnosed the claimant as having "extrinsic asthma, possible intrinsic."

The claimant was referred by Dr. Mayfield to Dr. Paul Martin Fiser with the Arkansas Allergy & Asthma Clinic in Little Rock. Dr. Fiser saw the claimant on January 25, 2000, and in a letter to Dr. Mayfield of that date, Dr. Fiser stated, among other things, that his impression for diagnostic purposes was:

1. Cough syndrome/hyperventilation syndrome/spastic dysphonia vs. bronchospasm.
2. History of rhinitis.

On February 11, 2000, in a letter to Dr. Mayfield, Dr. Fiser stated that he had seen the claimant again, and that she had had no severe bouts of asthma or breathing problems, and that an exhaust fan had been installed in the work area where she developed the x-ray films.

On July 24, 2000, Dr. Fiser, in a letter to Dr. Mayfield, stated in part that the claimant was generally better since Dr. Fiser had seen her in March and had very few problems. He stated that the claimant did continue to have episodic cough and tight chest when exposed to chemicals and strong smells.

The claimant was seen by Dr. Nancy Rector of the Little Rock Pulmonary Clinic on referral from Dr. Mayfield. Dr. Rector saw the claimant on August 24, 2000. Dr. Rector, in a report dated August 24, 2000, stated in part:

This lady says she is an x-ray tech that works at Dr. Mayfield's office, has exposure to x-ray chemicals. In January, for the first time, she had an asthma attack. She says that it was flu season, that she was in the dark room a lot. There was no exhaust fan and she had been making a lot of x-rays, that she got short of breath. She felt like she was hot and she was smothering, couldn't breathe. She went outside. She said Dr. Mayfield listened to her chest. She may have had an updraft at that time, but then by about three in the afternoon, she was much more short of breath and that two days later, he sent her to see Dr. Marty Fiser. She says she had actually had chest tightness prior to this episode in the dark room, that she had done a couple of pulmonary function tests on herself. Dr. Fiser put her on medications, which have included Serevent Diskus, Pulmicort, and Accolate. She feels like she has done

great on the medications, that as far as she is concerned, she has not had problems, but sometimes, she may have a little bit of a sensation of problems the first thing in the morning when she goes into the dark room. She says that they have since installed an exhaust fan and that things are much better. She notices problems if she gets too hot, if she is exposed to a lot of pollen or dust. She avoids going outside when they mow the grass. She has some problems with strong perfumes or other strong odors. She has not noticed cold, because we haven't had any cold weather since she had onset of this and she does have more problems if she exercises. . . .

Dr. Rector went on to say in that same report that Dr. Fiser had indicated to the claimant that maybe she needed to change jobs. Dr. Rector, addressing that particular issue, stated:

I think this lady needs to continue on her asthma medicines, that we can follow her pulmonary functions on a regular basis, but I would not tell her to change jobs based on the information she is telling me. I might talk with Dr. Mayfield and see if he has a different perspective of her symptoms at work. . . .

In a letter to Dr. Mayfield dated September 27, 2002, Dr. Fiser stated under the impression section of that letter:

1. Chronic obstructive and restrictive lung disease (?? cause) with bronchospasm.

FINDINGS OF FACT

1. The claimant does not meet her burden of proving by a preponderance of the evidence that the respiratory difficulties she complains of are causally related to her work activity for the respondent employer.

2. The claimant does not demonstrate by a preponderance of the evidence of record that any incident arising out of her work activities in 1999, 2000, 2001 or 2002 constitutes the "major cause" of her current respiratory difficulties.

DISCUSSION

Causal Connection

There is a threshold requirement in any workers' compensation case that an employee be able to prove by a preponderance of the evidence that he/she sustained an injury arising out of and in the course of his/her employment. The phrase "arising out of the employment" refers to the origin or cause of the accident, so the employee is required to show that a causal connection exists between the injury and her employment. Gerber Products v. McDonald, 15 Ark. App. 226, 691 S.W.2d 879 (1985). In this case, other than the claimant's suspicion and somewhat educated guess that her respiratory difficulties are connected to the chemicals used in developing x-ray films, there is no evidence that causally relates her respiratory complaints to her work activity.

Pulmonary Accidents

Ark. Code Ann. §11-9-114, entitled heart or lung injury or illness, is controlling and states in pertinent part:

(a) A cardiovascular, coronary, pulmonary, respiratory, or cerebrovascular accident or myocardial infarction causing injury, illness, or death is a compensable injury only if, in relation to other factors contributing to the physical harm, an accident is the major cause of the physical harm.

In Dr. Rector's report of August 24, 2000, Dr. Rector stated that while the claimant attributed part of her problems to the chemical fumes in the developing room where she worked, the claimant also noticed her respiratory problems were triggered if she got too hot, if she was exposed to pollen or dust, or to newly mown grass. That August 24 report further indicated that the claimant had difficulties after smelling strong perfumes or other strong odors.

Dr. Fiser, in his September 27, 2002 letter to Dr. Mayfield, stated under the impression section of that letter that he did not know what the cause of the claimant's obstructive and restrictive lung disease was.

As stated above, the claimant is unable to show a causal connection between her respiratory difficulties and her work activity. The evidence in this case falls far short of the claimant being able to show that her work activities or any particular incident triggering respiratory difficulties as a result of work are the "major cause" of her complained-of respiratory difficulties.

The above claim is respectfully denied and dismissed.

IT IS SO ORDERED.

DAIL STILES
Administrative Law Judge