

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F012622

CHARLES E. BARNES, EMPLOYEE	CLAIMANT
PINE BLUFF SAND & GRAVEL COMPANY, EMPLOYER	RESPONDENT
TRAVELERS, CARRIER	RESPONDENT

OPINION FILED MARCH 5, 2004

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN, on December 12, 2003 at Little Rock, Pulaski County, Arkansas.

Claimant represented by the HONORABLE SHEILA F. CAMPBELL, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE ROBERT H. MONTGOMERY, Attorney at Law, Little Rock, Arkansas.

ISSUES

A hearing was conducted to determine the claimant's entitlement to payment of medical expenses, temporary total disability benefits and attorney's fees.

At issue is whether or not the claimant developed mental illness as a result of a compensable injury as defined by Ark. Code Ann. §11-9-113.

After reviewing the evidence impartially without giving the benefit of the doubt to either party, Ark. Code Ann. §11-9-704, I find the evidence does not preponderate in favor of the claimant.

STATEMENT OF THE CASE

The parties stipulated to an employer-employee-carrier relationship on August 18, 1998, at which time the claimant sustained a compensable physical injury at a compensation rate of \$309.00. Medical expenses and temporary total disability benefits (until January 1, 2001) were paid before this claim was controverted. The claimant receives Social Security Disability benefits.

The claimant contends he sustained physical and mental injuries as a result of inhalation of toxic fumes on August 18, 1998. He seeks payment of additional medical expenses for post traumatic stress syndrome (PTSS) and temporary total disability benefits for twenty-six weeks beginning January 2, 2001, and attorney's fees.

Respondents contend that all appropriate benefits have been paid. There is no causal connection between the claimant's present physical condition and the compensable injury. If the claimant is suffering from mental illness, that condition is unrelated to his employment or the physical injury.

The following were submitted without objection and comprise the evidence of record: the parties' prehearing questionnaires and exhibits contained in the hearing transcript.

The claimant who was animated and gregarious, was the only witness to testify at the hearing. He is 39 years old (D.O.B. February 8, 1965) and has a high school education. He is in the process of divorcing his wife after separating in May, 2003.

The claimant was exposed to chemical fumes while driving his truck. The respondents accepted a claim for an inhalation injury pursuant to Ark. Code Ann. §11-9-114 but controverted the mental illness claim. Although the parties stipulated to a date of injury of August 18, 1998, the claimant stated the incident happened in June.

DOCUMENTARY EVIDENCE

The Material Safety Data Sheet (MSDS) required by OSHA identifies the chemicals as hydrogen chloride and phosphoric acid. Side effects from inhalation include irritation to mucous membranes and first aide is described as, "removing the person to fresh air." Required ventilation is listed as "local and/or mechanical."

MEDICAL EVIDENCE

The claimant was treated at the emergency room (ER) on September 27, 1998. He also received treatment from general practitioners at the Family Medicine Clinic. The claimant complained of malaise, tremor, weakness, and dizziness of “unclear etiology” although the doctor opined, “suspect stress induced,” after being “exposed to phosphoric acid, hydrogen chloride while riding in his truck.” He returned to his doctor complaining of trouble breathing, but his “workup from last time was basically negative.” His history “of chemical exposure (is) unlikely to be the etiology of his problem.” Dr. Duckworth commented that the claimant’s lungs were clear and a CT scan showed chronic sinusitis.

The claimant was also evaluated by neurologist, Dr. Dennis Lucy of UAMS. He reviewed the claimant’s test results (negative thyroid studies, liver studies, cardiac evaluation, chem-screen panel, rheumatoid studies), evaluated the right hand tremor (which disappeared when his hand was at rest) and commented, “the most likely explanation for the continuing symptoms was anxiety.” Dr. Lucy opined that the claimant should take anti-anxiety medication for weeks to months. Dr. Lucy specifically found no abnormality of the claimant’s speech or gait.

The claimant was seen by Dr. Stephen Shotts an ear, nose and throat specialist. He found “no evidence of any neurologic dysfunction” but “it is possible he has had an exposure induced Meniere’s (hearing loss, tinnitus, vertigo) type picture and that is the working diagnosis.” Dr. Shotts expected the condition to clear with no permanent impairment since diagnostic testing (MRI scan of the brain, ENG and auditory brainstem response) proved normal.

The claimant was also tested for allergies by Dr. Gene France. He diagnosed “inhalant sensitivities resulting in allergic rhinitis.” However, it is not clear that Dr. France attributes the inhalant allergies to the chemical exposure which the claimant stated happened in June 1999. Dr. France attributed the claimant’s complaints of weakness, dizziness, headaches and visual problems to chemical exposure. The claimant was given a nasal spray and Claritin D and general instructions to avoid dust and mold for his allergies. Dr. France again noted normal pulmonary function and recommended follow-up with a neurologist.

The claimant was evaluated at the Behavioral Healthcare Clinic on December 1, 2000. He complained of an inability to work (since September 11, 2000), anger, bankruptcy, sexual dysfunction, shortness of breath, headaches, and an inability to control his hands and legs. He was diagnosed with “Adjustment Disorder with Depressed Mood” by psychiatrist, Dr. Shamim Malik. Medication proved helpful and Dr. Malik described the claimant’s condition “in remission” as of January 3, 2001, but recommended continued therapy. The claimant’s medication was increased when he returned on June 6, 2001 wearing a face mask and using a cane. He stated he had been turned down twice for disability benefits. The claimant returned again in September 2001 complaining of back pain.

Dr. Malik changed the claimant’s diagnosis on February 6, 2002 to “Post Traumatic Stress Disorder and Adjustment Disorder with depressed and anxious mood.” The claimant stated he was unable to work because of depression and a sensitivity to odors. He continued to complain of financial problems, an inability to sleep and back pain.

Neurologist, Dr. David Silas diagnosed the claimant with “atoxic encephalopathy (brain inflammation) secondary to hydrochloric acid inhalation” in a report dated October 17, 2002. He commented that the claimant should explore rehabilitation because it was “doubtful” that he could return to truck driving due to his loss of coordination. Dr. Silas described the claimant’s speech as slurred and his gait abnormal. Dr. Silas commented, “It is my impression that he is totally disabled at this time and unable to find suitable employment.” It is difficult to reconcile Dr. Silas’ opinion with that of Dr. Lucy’s. It is unclear if Dr. Silas based his opinion on diagnostic testing or just a physical examination and history from the claimant.

The claimant was also treated by Dr. Dalwyn Sealy, a neuropsychiatrist. Dr. Sealy diagnosed post-traumatic stress disorder following a “life-threatening exposure to hydrochloric acid fumes.” In a report dated February 3, 2002, Dr. Sealy commented, “his ‘healing period’ is certainly not at an end and his condition is likely to be indefinite.” It is noted that based on the MSDS, the chemicals are not life-threatening and the claimant’s treatment plan (medication Paxil, Xanax, Alprazolam and therapy sessions) has remained unchanged for the last several years. Dr. Sealy’s comments about “altered genetics,” “global effects” and “complex constellation of symptoms” seem somewhat melodramatic and therefore, unpersuasive.

FINDINGS AND CONCLUSIONS

The evidence of record shows the claimant was exposed to chemicals that can cause irritation of the mucous membranes. The claimant has had the benefit of extensive diagnostic testing and consultation with specialists with no objective medical findings of a physical injury caused by chemical exposure as the source of mental distress. Amlease, Inc. v. Kuligowski, 59 Ark. App. 261,

957 S.W.2d 715 (1997).

Ark. Code Ann. §11-9-113

A mental injury or illness is not a compensable injury unless it is caused by physical injury to the employee's body, and shall not be considered an injury arising out of and in the course of employment or compensable unless it is demonstrated by a preponderance of the evidence.

There is no evidence of respiratory, eye, or sinus damage. Both Dr. Duckworth and Dr. France commented that the claimant's pulmonary function was normal. Dr. France noted the claimant did not complain of any eye symptoms and his sinus condition was described as chronic not acute.

The claimant's other symptoms, weakness, tremor, back pain, and sexual dysfunction, are not causally connected to irritation of the mucous membranes.

As I interpret Dr. Shotts' reports, his "working" diagnosis of Meniere's disease was not definite and Dr. Silas' diagnosis of encephalopathy was not based on any objective findings.

1. The Workers' Compensation Commission has jurisdiction of this claim in which the relationship of employer-employee-carrier existed among the parties on August 18, 1998.
2. The claimant has failed to prove a compensable mental illness as defined by Ark. Code Ann. §11-9-113.

This case is respectfully denied and dismissed.

IT IS SO ORDERED.

ELIZABETH W. HOGAN
Administrative Law Judge