

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F307533

PAMELIA GEORGE	CLAIMANT
SILOAM SPRINGS SCHOOL DISTRICT	RESPONDENT
RISK MANAGEMENT RESOURCES, INSURANCE CARRIER	RESPONDENT

OPINION FILED FEBRUARY 17, 2004

Hearing before ADMINISTRATIVE LAW JUDGE MICHAEL L. ELLIG, in Springdale, Washington County, Arkansas.

Claimant represented by MARK FREEMAN, Attorney, Fayetteville, Arkansas.

Respondents represented by BETTY DEMORY, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above styled claim on December 22, 2003, in Springdale, Arkansas. A pre-hearing order was entered in this case on October 20, 2003. This pre-hearing order set out the stipulations offered by the parties and outlined the issues to be litigated and resolved at the present time. Prior to the commencement of the hearing, the parties announced the appropriate weekly compensation rates and requested that the issue of the claimant's entitlement to permanent disability benefits be withdrawn, at the present time. A copy of this pre-hearing order with those amendments noted thereon, has made Commission's Exhibit No. I to the hearing.

The following stipulations were offered by the parties and are hereby accepted:

1. On all relevant dates, the relationship of employee-self insured employer existed between the parties.
2. The appropriate weekly compensation rates are \$425.00 for total disability and \$319.00 for permanent partial disability.
3. The claim is controverted in its entirety.

By agreement of the parties, the issues to be litigated and resolved at the present time were limited to the following:

1. Whether the claimant's respiratory difficulties beginning in August of 2002, represent a compensable injury or occupational disease.
2. The claimant's entitlement to the payment of medical expenses, temporary total disability from February 15, 2003 through April 21, 2003, and attorney's fees.
3. Whether the claimant's hearing loss represents a compensable injury or occupational disease.
4. The claimant's entitlement to the payment of medical expenses and attorney's fees associated with her hearing loss.

In regard to these issues, the claimant contends:

"The claimant contends she suffered a compensable injury while employed by the respondents and is entitled to reasonable and necessary medical treatment as well as temporary total disability benefits and a controverted attorney's fees."

In regard to these issues, the respondents contend:

"It is the contention of the respondents that the claimant did not sustain an injury arising out of and in the course and scope of her employment with Siloam Springs School District. Specifically, the respondents assert that the claimant's breathing and hearing complaints are not causally related to her employment at Siloam Springs School District."

DISCUSSION

I. COMPENSABILITY

The first and central issue in this case is the question of whether the claimant's difficulties with various portions of her respiratory tract and her difficulties with her ears represent compensable injuries or occupational diseases, within the meaning of the Arkansas Workers' Compensation Act. The burden rests upon the claimant to prove by a preponderance of the evidence all of the facts necessary to meet the requirements set out

in the Act for either a compensable injury or a compensable occupational disease.

The greater weight of the medical evidence shows the claimant's respiratory difficulties to be in the form of sinusitis and asthma. This medical evidence further shows that her sinusitis has been extensive (pansinusitis) and persistent or chronic. In regard to her asthma, she has experienced periodic exacerbations of her symptoms, two of which required hospitalization.

The greater weight of the medical evidence shows that the claimant's ear or hearing difficulties were in the form of bilateral serous otitis media. This condition is also shown to be pervasive and chronic.

The actual existence of all of the foregoing conditions is clearly supported by numerous "objective findings". These findings take the form of visually noted abnormalities on repeated physical examinations by a number of physicians, abnormal breathing sounds noted on clinical evaluations by various physicians and abnormal results noted on spirometry testing.

The greater weight of all the credible evidence clearly establishes that the claimant's employment exposed her to an unusually high levels of airborne mold and mildew and the spores these fungi produce. The claimant's testimony concerning the presence of these organisms is not only credible, in and of itself, but is further supported by the testimony of one of her fellow teachers, a Mindy Pittman. Air samples taken at the claimant's work place, at her request, also showed the presence of airborne spores from at least three specific fungal organisms (alternaria, cladosporium, and epiccocum).

However, the real issue is whether there was a causal relationship between the claimant's diagnosed respiratory and ear conditions and her employment related exposure to inordinately high levels of various fungi and fungi spores. After consideration of all of the evidence presented, it is my opinion the claimant has proven the existence of this causal relationship in regard to the claimant's respiratory conditions, but has not proven

the existence of this causal relationship in regard to her ear condition.

First, the record shows the presence of a close temporal relationship between the claimant's employment related excessive exposure to fungi and fungi spores and the onset and continuation of her respiratory difficulties. There is no evidence that the claimant had ever experienced similar respiratory complaints prior to her employment related excessive exposure to fungi and fungi spores. The claimant's respiratory complaints only appeared after this employment related exposure.

More importantly, the medical evidence confirms the existence of such a causal relationship. In her report of February 6, 2003, Dr. Laura J. Koehn states:

"The patient's problem (chronic sinusitis and asthma) is either directly caused by the mold or definitely aggravated by it...."

In her report of July 1, 2003, Dr. Koehn states:

"I definitely think that your (respiratory) symptoms are at least aggravated by your work place and it may be that you would not have had symptoms without the combination of the mold and the pollen in the air. You are a person who tends to produce the IgE antibody when confronted with things that are potentially allergenic but an allergic patient who is in an environment where there are a lot of mold spores may certainly have an increase in their symptoms. Your symptoms were further aggravated by the fact you got a sinus infection, which was secondary to the allergy. It also aggravated your asthma, however, so that your asthma was driven by both the things you are allergic to and the ongoing infection."

In his discharge summary of February 19, 2003, Dr. Kyle Hardy notes:

"Most likely this patient has asthma triggered by mold in her work place."

Dr. Koehn is board certified in allergy and immunology, with her practice limited to the diagnosis and treatment of allergies. She has been one of the claimant's primary treating physicians. Tests she performed on the claimant revealed that the claimant was particularly allergic to the fungi alternaria and/or its spores. This was one of the fungi, specially identified in the air sample test performed on the claimant's classroom and known to be related to both asthma and sinusitis (Claimant's Exhibit No. 1, page 26).

Dr. Hardy is a highly qualified pulmonologist. He has also been one of the claimant's primary treating physicians for her respiratory difficulties.

Both of the foregoing physicians have sufficient expertise to offer an expert medical opinion on the presence of a causal relationship between the claimant's respiratory difficulties and her employment related exposure to excessive levels of fungi and/or fungi spores. They also appear to have sufficient information to formulate an accurate opinion on this matter, and their opinions are supported by the other evidence presented. The opinions they have expressed are clearly stated within a reasonable degree of medical certainty, as required by Ark. Code Ann. §11-9-102(16)(B). I find their opinions sufficient to prove the existence of a causal relationship between the claimant's respiratory difficulties in the form of sinusitis and asthma and her employment related exposure to high levels of fungi and/or fungi spores beginning in August of 2002.

In regard to the claimant's ear difficulties, chronic bilateral otitis media, the evidence only shows a close temporal relationship between the onset and continuation of this condition and the claimant's employment related exposure to high levels of fungi and/or fungi spores. There is no expert medical opinion to establish the existence of any causal relationship.

Clearly, expert medical opinion or evidence is not necessary to prove or even confirm the required causal relationship in every case, Gerber Products v. McDonald, 15 Ark. App. 226, 691 S.W. 2d 879 (1985). However, such evidence is necessary when the nature of the alleged compensable condition is such that its cause cannot be determined by the use of simple logic and lay knowledge.

In the present case, I am unable to find that bilateral otitis media is logically attributable to the claimant's contemporaneous employment related exposure to high levels of airborne fungi and/or fungi spores. None of the medical evidence in any way attributes this condition to such exposure. Thus, the claimant has failed to prove the necessary

causal connection between her ear or hearing difficulties and her employment.

The claimant's respiratory condition of sinusitis and asthma are commonly recognized under the Act as disease processes rather than injury. The same would be true of the claimant's ear condition, in the form of bilateral otitis media. Therefore, in resolving this issue of compensability the occupational disease provisions of Ark. Code Ann. §11-9-601 et. seq. would be controlling.

Ark. Code Ann. §11-9-601(e)(1) requires proof by a preponderance of the evidence that the disease resulted in disability or death and arose out of and was in the course of the employment (i.e. that there was a causal connection between the employment and the disease).

As previously noted, the claimant has proven by a preponderance of the evidence a causal connection between her employment with the respondent and her respiratory conditions, in the form of chronic sinusitis and allergic asthma. She has failed to prove the existence of such a causal connection between her employment with the respondent and her ear or hearing condition, in the form of bilateral otitis media. Thus, she has shown that her respiratory conditions arose out of and in the course of her employment with the respondent beginning in August of 2002. However, she has not shown that the same is true for her ear or hearing condition.

The evidence further shows that the claimant's respiratory conditions have, at least temporarily, produced some disability. Therefore, the claimant has satisfied the second requirement of Ark. Code Ann. §11-9-601(e)(1), in regard to her respiratory conditions.

It could be argued that the claimant's chronic sinusitis and asthma represent "ordinary diseases of life to which the general public is exposed." Thus he would not be entitled to any compensation for these conditions, under the exclusion contained in Ark. Code Ann. §11-9-601(e)(3). However, in construing this subdivision the fact that the general public may contract these diseases is not controlling; the test of compensability is

whether the nature of the particular employment exposed the claimant to a greater risk by contracting these diseases than the risk experienced by the general public or workers in other employments, Sanyo Mfg. Corp. v. Leisure, 12 Ark. App. 274, 675 SW. 2d 841(1984). Clearly, the claimant's employment, that exposed her to unusually high levels of fungi and fungi spores of a type known to cause sinusitis and asthma, subjected her to a greater risk of contracting these diseases than that experienced by the general public or workers outside of this particular environment.

It could also be agreed that the claimant's respiratory diseases are not characteristic and peculiar to the occupation of school teaching and would not meet the requirements of Ark. Code Ann. §11-9-601(g)(1)(A).

Clearly, these diseases would not have the same relationship to teaching that silicosis and asbestosis has to mining. However, this is not the relationship contemplated by Ark. Code Ann. §11-9-601(1)(A). Applicable case law provides that all that is required for a disease to satisfy the requirements of this subdivision is that there is a recognizable link between the nature of the job being performed and an increased risk of contracting the occupational disease in question, Sanyo Mfg. Corp v. Leisure, cited supra. In the present case, the evidence clearly shows a recognizable link between the nature of the claimant's job and an increased risk of her contracting chronic sinusitis and episodes of allergic asthma.

The facts in this case are strikingly similar to those in the case of Crossett School District v. Gourley, 50 Ark. App. 1, 899 S.W. 2d 482(1995), and I reach the same conclusions as were made in that case. After consideration of all the evidence presented, I find that the claimant has proven that her respiratory difficulties, in the form of chronic sinusitis and allergic asthma, represent compensable occupational diseases under Ark. Code Ann. §11-9-601. She is therefore entitled to appropriate benefits for these occupational diseases.

However, I also find that the claimant has failed to prove that her ear or hearing difficulties, in the form of otitis media, present an occupational disease or compensable injury. Therefore, she would not be entitled to any benefits under the Act for these difficulties.

II. BENEFITS

Clearly, the claimant would be entitled to all reasonably necessary medical services for her compensable respiratory difficulties. However, the evidence reveals that several of the claimant's physicians have not only provided her with services that were reasonably necessary for her compensable respiratory difficulties, but have also concurrently provided her with medical services necessitated by non compensable conditions, such as her ear or hearing difficulties and gastric complaints (including GERD).

It appears that all of the services provided the claimant by Dr. Koehn and Dr. Randall Davis (a partner of Dr. Crocker) were related to or necessitated by the claimant's compensable respiratory difficulties. The evidence further shows that these services were of a type or nature commonly recognized by the medical community as being appropriate to diagnose and treat difficulties of this nature. The evidence further shows that the services provided by Dr. Koehn and Dr. Davis were successful in accomplishing the purposes for which they were intended and have allowed not only an accurate diagnosis of the nature and extent of the claimant's compensable respiratory difficulties, but also substantial improvement of these difficulties.

Thus, all of the services rendered the claimant by Dr. Koehn and Dr. Davis represent reasonably necessary medical services under Ark. Code Ann. §11-9-508. Pursuant to this subsection, the respondents are liable for the expense of these services (subject to the Commission's medical fee schedule).

The medical reports and records of Dr. Stinnett and Dr. Crocker show that they have both provided some medical services for the claimant's compensable respiratory difficulties

and some services for her non compensable ear difficulties. However, the services provided the claimant for her compensable respiratory difficulties (primarily her chronic sinusitis) are of a type and nature commonly recognized and employed to accurately diagnose and treat such difficulties. The evidence also shows that these services were relatively successful in accomplishing these purposes.

Thus, the medical services provided the claimant by and at the direction of Dr. Stinnett and Dr. Crocker, for her compensable respiratory difficulties (in the form of chronic sinusitis) represent reasonably necessary medical services under Ark. Code Ann. §11-9-508. The respondents are liable for the expense of these services, subject to the Commission's medical fee schedule. The respondents are not liable for any expenses incurred for services provided by the physicians, that was related to or necessitated by her non compensable ear or hearing difficulties.

The medical reports and records of Dr. Hardy shows that he has provided the claimant with medical services for her compensable respiratory difficulties and non compensable gastric problems, diagnosed as GERD (gastroesophageal reflux disease). Again, the evidence shows that the service he provided her for her compensable respiratory difficulties, in the form of chronic sinusitis and allergic asthma, constitutes reasonably necessary medical services under Ark. Code Ann. §11-9-508.

Therefore, the respondents are only liable for these services provided by Dr. Hardy that were directed toward or necessitated by the claimant's compensable respiratory conditions. Again, this liability is subject to the Commission's medical fee schedule. The respondents are not liable for the expense of any services incurred for the evaluation or treatment of the claimant's non compensable gastric conditions, such as GERD.

The remaining issue is the question of whether the claimant was temporarily totally disabled for the period of February 15, 2003 through April 21, 2003. In order to be entitled to establish such disability the claimant must prove that she was still within the healing

period from her compensable respiratory diseases and was also rendered totally disabled during this period as a result of these compensable respiratory diseases.

The duration of the healing period is essentially a medical question that must be resolved on the basis of the medical evidence presented. The healing period continues until the claimant has received maximum benefits for time and medical treatment in the resolution or stabilization of the actual physical damage caused by the compensable injury or disease.

The medical evidence reveals that the claimant was under active medical treatment for her compensable respiratory difficulties on February 15, 2003, and was, in fact, hospitalized for these difficulties on that date. This evidence further shows that the claimant continued under active medical treatment for these difficulties by Dr. Hardy, Dr. Koehn, and Dr. Randall Davis (a partner of Dr. Crocker) through April 21, 2003. Thus, the claimant has satisfied the first element for temporary total disability during this period.

The fact that the claimant was hospitalized for her compensable respiratory difficulties from February 15, 2003 through February 19, 2003, would clearly show that she was unable to work during that period of time. During this hospitalization the claimant was seen in consultation for her compensable chronic sinusitis by Dr. Davis, an otolaryngologist. Dr. Davis instructed the claimant to remain off work and stay away from her school until March 10, 2003. On March 5, 2003, the claimant was seen in follow up for her compensable respiratory conditions by Dr. Hardy. At that time, Dr. Hardy instructed the claimant to remain off work until she was again seen, in three to four weeks. This subsequent visit with Dr. Hardy took place on April 7, 2003, At the time of this subsequent visit, Dr. Hardy released the claimant to return to work on April 21, 2003 (which apparently the claimant did).

It is my finding that the claimant has proven that she was rendered totally disabled by the effects of her compensable respiratory conditions for the period of February 15,

2003 through April 20, 2003. Thus, the claimant has satisfied the second element for temporary total disability for the period of February 15, 2003 through April 20, 2003.

Although the claimant was proven that she was rendered temporarily totally disabled by her compensable respiratory conditions for the period of February 15, 2003 through April 20, 2003, it does not automatically follow that she is entitled to actually receive compensation for such temporary disability. Ark. Code Ann. §11-9-807 provides:

“(b) If the injured employee receives full wages during disability, he or she shall not be entitled to compensation during the period.”

In the present case, the claimant testified that she received her regular wages for all but two days of the time she was off for her respiratory difficulties. Thus, the provisions of Ark. Code Ann. §11-9-807(b) would bar the claimant from actually receiving more than two days of temporary total disability benefits.

Therefore, find that the claimant is only entitled to two days of temporary total disability benefits for her period of temporary total disability from February 15, 2003 through April 20, 2003. In reaching this conclusion, I am aware that Ark. Code Ann. §11-9-501(a) creates an initial seven (7) day waiting period on the payment for temporary total disability benefits. However, the express wording of this supervision only refers to seven days of disability, not seven days of compensable disability. Clearly, this claimant has proven that she has experienced more than fifteen (15) days of actual disability, and Ark. Code Ann. §11-9-501(a) would not prevent her from receiving benefits for only two days of this disability.

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On all relevant dates, the relationship of employee-self insured employer-TPA existed between the parties.

3. On all relevant dates, the appropriate weekly compensation rates are \$425.00 for total disability and \$319.00 for permanent partial disability.
4. The claimant has proven that her respiratory difficulties (in the form of chronic sinusitis and asthma), which began in August of 2002, represents a compensable occupational disease, within the meaning of Ark. Code Ann. §11-9-601.
5. The claimant has failed to prove that her ear or hearing difficulties (in the form of otitis media), which began in August of 2002, represents either a compensable injury or occupational disease, within the meaning of the Act. Specifically, the claimant has failed to prove by the greater weight of the credible evidence the existence of a causal relationship between these difficulties and her employment with this respondent. Thus, these difficulties did not “arise out of and occur in the course of her employment”, with this respondent, a fact necessary to prove either a compensable injury or an occupational disease.
6. The medical services provided the claimant for her compensable sinusitis and asthma by and at the direction of Dr. Scott Stinnett, Dr. Laura A. Koehn, Dr. Thurman Crocker, Dr. Randall Davis, and Dr. Kyle Hardy represent reasonably necessary medical services for the claimant’s compensable occupational diseases (in the form of sinusitis and allergic asthma). Pursuant to Ark. Code Ann. §11-9-508, the respondents are liable for the expense of such services, subject to the medical fee schedule established by this Commission. However, the respondents are not liable for any expense incurred by the claimant as a result of services rendered her by these physicians that was necessitated by or related to her non compensable ear or hearing difficulties (otitis media) or her non compensable gastric

difficulties (GERD). Such services would not represent reasonably necessary medical services under Ark. Code Ann. §11-9-508.

7. The claimant has proven that she has been rendered temporarily totally disabled, as a result of her compensable sinusitis and allergic asthma, for the period of February 15, 2003 through April 20, 2003. However, pursuant to the provisions of Ark. Code Ann. §11-9-807(b) the claimant is only entitled to compensation benefits of two days for this period of temporary total disability. For the remainder of this period, the claimant received her regular wages from the respondents.
8. The respondents have controverted this claim in its entirety and have denied the claimant's entitlement to any benefits.

ORDER

The respondents shall pay to the claimant two days of temporary total disability benefits, such benefits have been previously accrued.

The respondents shall be liable for the expense of all medical services provided to the claimant for her compensable sinusitis and allergic asthma by and at the direction of Dr. Stinnett, Dr. Koehn, Dr. Crocker, Dr. Davis, and Dr. Hardy. Such liability shall be subject to the medical fee schedule established by this Commission. The respondents shall be entitled to a set off against such liability for any of these medical expenses paid under the claimant's group policy of insurance. However, the respondents shall either obtain a release from the group carrier or shall reserve an amount equal to satisfy any liens of the group carrier for a period of five years. If during this five year period no release is obtained from the group carrier or any order entered otherwise directing disbursement of these funds, then these funds shall be paid to the Death & Permanent Total Disability Trust Fund of the State of Arkansas.

The respondents shall pay to the claimant's attorney the maximum statutory attorney's fee on all controverted indemnity benefits herein awarded to the claimant. One-half of this amount is the obligation of the respondents in addition to such benefits. The remaining one-half of this amount is to be withheld by the respondents from the indemnity benefits herein awarded to the claimant.

All benefits herein awarded, which have heretofore accrued, are payable in a lump sum without discount.

This award shall bear the maximum legal rate of interest until paid.

IT IS SO ORDERED.

MICHAEL L. ELLIG
Administrative Law Judge