

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F306616

MARTHA HURD, Employee	CLAIMANT
WAL-MART, INC., Employer	RESPONDENT
CLAIMS MANAGEMENT, INC., Carrier	RESPONDENT

OPINION FILED JULY 16, 2004

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Springdale, Washington County, Arkansas.

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

Respondents represented by ANDREW IVEY, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On June 30, 2004, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on January 7, 2004, and a pre-hearing order was filed on January 8, 2004. A copy of the pre-hearing order has been marked Commission's Exhibit #1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The relationship of employee-employer existed between the parties on May 18, 2003.

At the time of the hearing the parties agreed to stipulate that claimant earned sufficient wages to entitle her to compensation at the rate of \$230.00 per week for temporary total disability benefits and \$173.00 per week for permanent partial disability benefits.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Compensability of chemical exposure to hands.
2. Related medical.

3. Attorney fee.

The claimant contends she suffered a compensable injury in the form of chemical exposure to her hands.

The respondents contend the claimant cannot meet her burden of proof of a compensable injury.

From a review of the record as a whole, to include medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witnesses and to observe their demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on January 7, 2004, and contained in a pre-hearing order filed January 8, 2004, are hereby accepted as fact.

2. The parties' stipulation that claimant was earning sufficient wages to entitle her to compensation at the rate of \$230.00 per week for temporary total disability benefits and \$173.00 per week for permanent partial disability benefits is likewise accepted as fact.

3. Claimant has failed to prove by a preponderance of the evidence that she suffered a compensable injury in the form of chemical exposure to her hands while employed by the respondent.

DISCUSSION

The claimant is a very nice 47-year-old woman who began working in the respondent's ODC lab in 2002. The respondent's ODC lab grinds lenses for prescription eye glasses. Approximately three or four weeks before May 18, 2003, the claimant's job duties changed and she began working with chemicals that are put on lenses. These

chemicals are used to make lenses scratch resistant. This job requires employees to place lenses in a machine which then applies a chemical coating.

After performing this job for some three to four weeks, at times without gloves according to claimant's testimony, she began noticing raw sores, blisters, and crusting on her hands on or about May 17, 2003. Claimant testified that she reported her hand problems to Brett Castleberry and informed him that she wanted to see her family physician, Dr. Hart. Claimant testified that she saw Dr. Hart on May 18, 2003 and subsequently informed respondent that her hand condition was work related. As a result, respondent sent claimant to the Lowell Clinic where claimant was evaluated by Max Beasley, a nurse practitioner. Beasley diagnosed claimant's condition as contact dermatitis with possible eczema. At the time of claimant's second visit with Beasley claimant was also evaluated by Dr. Gary Moffitt. Medical reports indicate that Dr. Moffitt diagnosed the claimant's rash as eczema which was not related to a contact allergen. When claimant became upset with Dr. Moffitt's opinion claimant was referred to a dermatologist for an additional evaluation. This evaluation occurred at Ginger Dermatology Associates. However, claimant was not evaluated by Dr. Ginger, but instead was evaluated by Robert Stevens, a physician's assistant. Stevens diagnosed claimant as suffering from dyshidrotic eczema/irritant contact dermatitis. Stevens has prescribed medication for claimant's condition.

Claimant filed this claim contending that she suffered a compensable injury in the form of chemical exposure to her hands while working for respondent. She seeks payment of related medical treatment and a controverted attorney fee.

### ADJUDICATION

Dermatitis is an occupational disease for which a causal connection between the occupation and the disease must be established by a preponderance of the evidence.

A.C.A. §11-9-601(e)(1)(B) and *Dodd v. Colson Caster Corporation*, Full Commission Opinion filed March 24, 1997 (E402142).

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has simply failed to meet her burden of proving by a preponderance of the evidence that she suffered a compensable injury which is causally related to her employment with the respondent.

As previously noted, claimant testified that approximately three or four weeks after she began working with chemicals which were put on lenses she began noticing raw sores, blisters, and crusting on her hands. Claimant testified that although the employees were required to wear gloves when performing this activity, that gloves were not always available. Also in support of her contention claimant relies upon the medical reports which diagnose her as suffering from contact dermatitis which she attributed to her work with chemicals for the respondent. Claimant also would rely upon testimony from supervisors indicating that other employees for the respondent have had skin problems relating to the use of chemicals.

While I acknowledge that it is possible that claimant suffers from contact dermatitis which resulted from her use of chemicals while working for respondent, claimant has the burden of proving more than a possibility. She has the burden of proving a causal relationship by a preponderance of the evidence. I find that claimant has failed to meet that burden for several reasons.

First, the evidence is contradictory with respect to the claimant's reporting of her work related injury. Claimant testified at the hearing that she noticed the problems with her hands on approximately May 17, 2003; that she reported those problems to Brett Castleberry; and that she informed Castleberry she wanted to see her family physician. Testifying on behalf of respondent was Brett Castleberry who is the production manager for the ODC lab. Castleberry testified that he does not recall the claimant reporting an

injury to him on or about May 18, 2003. Instead, Castleberry testified that his first knowledge of an alleged work related injury was in June after claimant had already talked to Betty Wheat, her immediate supervisor, about her hands and claimant had been to the doctor. Betty Wheat, the claimant's immediate supervisor, testified that she likewise did not recall the claimant reporting an injury to her hands on or about May 18, 2003. Wheat testified that she believed claimant first mentioned hand problems in June at which time she attributed those problems to her use of the chemical coating. Finally, Maranda Dean, the personnel supervisor in May and June of 2003, testified that she did not learn of any alleged hand problems until June 2003.

Supporting the testimony of respondent's witnesses is a workers' compensation associate's statement completed by the claimant on June 16, 2003. That statement which claimant acknowledged was in her own handwriting indicates that her injury occurred on May 18, but it also indicates that claimant did not report the injury until June 8. Claimant also indicated on the form that she did not immediately report the injury because she "didn't want to mess with report."

Thus, on the one hand we have claimant's testimony that she first noticed her hand problems on or about May 17 or May 18, 2003, at which time she mentioned those problems to Castleberry and indicated that she needed to see her physician. On the other hand, we have testimony from three witnesses of respondent who indicated that claimant did not report a work related injury until June 2003. Their testimony is corroborated by the statement completed by claimant indicating that she did not report the injury until June 8.

Claimant also testified that she sought medical treatment from her family physician, Dr. Hart, on May 18, 2004. This would have been shortly after claimant first noticed problems with her hands. Dr. Hart's medical report was not submitted into evidence; therefore, it could not be reviewed.

I also believe it is important to note that while Robert Stevens diagnosed the

claimant as suffering from dyshidrotic eczema/irritant contact dermatitis, he did not specifically opine that this condition was related to claimant's employment with respondent other than through claimant's history to him. Furthermore, to the extent that Stevens' reports could be interpreted as stating a causal connection between claimant's hand condition and her employment with respondent, I note that Stevens is a physician's assistant, not a medical doctor. On the other hand, Dr. Moffitt, a medical doctor, evaluated claimant's hands on June 17, 2003 and opined that claimant's rash was eczema and was not due to a contact allergen. I find that Dr. Moffitt's opinion is credible and entitled to great weight.

Finally, I also believe it is important to note that claimant testified that she suffers from a number of current hand problems including numbness, swelling, and blackness around the knuckles. In addition, claimant testified that she has no strength in her fingers and as a result cannot lift things. Based upon these complaints Stevens in a report of January 5, 2004 indicated that claimant should see her primary care physician for referral to a rheumatologist. Claimant was evaluated by Dr. Miller of Arthritis Associates of Arkansas on April 14, 2004. Dr. Miller in her report of that date questioned whether claimant was in the early stages of reflex sympathetic dystrophy or carpal tunnel syndrome. Dr. Miller recommended that the claimant undergo a nerve conduction study, bone scan, and x-rays of the hand. While claimant seems to attribute these additional problems to her employment with the respondent and her exposure to chemicals, I find insufficient evidence linking this condition and those complaints with the contact dermatitis, much less claimant's employment with the respondent.

In summary, claimant has the burden of proving by a preponderance of the evidence that her hand condition is causally related to her employment with the respondent. While it is possible that claimant's hand condition is causally related to her employment with respondent, I find that claimant has failed to meet that burden of proof by a preponderance

of the evidence. First, claimant's testimony regarding the reporting of her injury is inconsistent with the testimony of respondent's witnesses and the form completed by claimant. Furthermore, the initial medical report of Dr. Hart from May 18, 2003 is not contained in the record. In addition, while claimant was diagnosed by Robert Stevens as suffering from dyshidrotic eczema/irritant contact dermatitis, Mr. Stevens is a physician's assistant, not a medical doctor. On the other hand, Dr. Moffitt evaluated the claimant and opined that her condition was not related to a contact allergen. Finally, the evidence also indicates that claimant is currently complaining of numerous hand problems of which there is no credible evidence causally relating those problems to either contact dermatitis or to claimant's employment with the respondent. Accordingly, for the foregoing reasons, I find that claimant has simply failed to meet her burden of proof.

#### ORDER

Claimant has failed to prove by a preponderance of the evidence that she suffered a compensable injury as a result of a chemical exposure to her hands while employed by respondent. Therefore, her claim for compensation benefits is hereby denied and dismissed.

IT IS SO ORDERED.

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GREGORY K. STEWART  
ADMINISTRATIVE LAW JUDGE