

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F111483

DEBBIE SONTAG, EMPLOYEE

CLAIMANT

BEARD BREEDING PAINTING, INC., EMPLOYER

RESPONDENT

**CYPRESS INSURANCE COMPANY/
CANNON COCHRAN MANAGEMENT SERVICES (TPA),
INSURANCE CARRIER**

RESPONDENT

OPINION FILED JULY 13, 2004

Submitted on the record before Administrative Law Judge Cynthia Estes Rogers.

Claimant represented by Mr. James W. Stanley, Attorney at Law, Little Rock, Arkansas.

Respondents represented by Mr. Andy L. Caldwell, Attorney at Law, Little Rock, Arkansas.

_____ This case was submitted on the record to determine whether the claimant sustained a compensable occupational disease within the meaning of the Arkansas Workers' Compensation Law, for which she is entitled to indemnity and medical benefits.

The parties have stipulated that the Arkansas Workers' Compensation Commission has jurisdiction of this claim; that the employee-employer-carrier relationship existed between the parties at all relevant times, including February 20, 2000; and that they would be able to stipulate to a compensation rate, although one was never provided.

_____ Claimant contends that she suffers from a diagnosed asbestos-related lung disease as a result of her exposure to asbestos while employed by respondent, Beard Breeding Painting Company, while working on a project in the Tower Building.

Respondents contend that claimant cannot meet her burden of proving a compensable occupational disease or any other compensable injury under the applicable Arkansas Workers' Compensation laws. Specifically, without intending to limit the scope of this contention, the respondents contend that the claimant cannot demonstrate a causal connection between her employment with respondent employer and her alleged occupational disease by clear and convincing evidence as required by Ark. Code Ann. § 11-9-601(e)(1)(B) (Repl.

1996), nor can she demonstrate sufficient evidence to rebut the presumption set forth in Ark. Code Ann. § 11-9-602(b) (Repl. 1996). Further, respondents contend that claimant's employment could not have resulted in exposure to asbestos on the Tower Building job site on February 20, 2000.

STATEMENT OF THE CASE

The parties have submitted this matter for a decision on some stipulated facts, medical exhibits, depositions, and briefs outlining their respective positions.

The claimant is seeking benefits on the basis that she allegedly sustained a compensable occupational disease pursuant to Ark. Code Ann. § 11-9-601. The claimant was employed as a painter for respondent employer for just over one year. She started in October or November of 1999 and continued until early to mid 2001. Claimant asserts that she was exposed to asbestos while working in the Tower Building, where she alleged that she was removing ceiling tiles. She later admitted in her deposition that she was not actually removing ceiling tiles but, rather, simply indicated that there were holes in the ceiling. The claimant contends that there was a substance there that she was not familiar with and that she believes it was asbestos.

Claimant did not file a claim until October of 2001, noting that the date of the alleged injury was on or about February 20, 2000, while she was working at the "TCBY" [Tower] Building.

Claimant was previously employed with AT&T from 1973 until 1991, where she laced cables, soldered circuit boards, and worked with fiberglass. During that time, claimant also did remodeling jobs, including painting and drywall work. Claimant has admitted that she was exposed to asbestos during her employment with AT&T; and, according to her deposition, she is involved in a Class Action lawsuit against AT&T and others.

FINDINGS OF FACT

1. Claimant has failed to meet her burden of proving a compensable occupational disease under the applicable Arkansas workers' compensation laws.

2. The claimant has failed to demonstrate a causal connection between her employment with respondent employer and her alleged occupational disease by clear and convincing evidence as required by Ark. Code Ann. § 11-9-601(e)(1)(B) (Repl. 1996).

DISCUSSION

In a letter dated June 18, 2001, to a Julie Rauls of Edward O. Moody, P.A., Dr. Ray Harron stated that he reviewed, at Ms. Rauls's request, the occupational history, exposure, medical history as provided to him, and a chest x-ray dated February 28, 2001, of claimant. He noted that her work history revealed an occupational exposure to various asbestos containing products from 1973 to 1991, while she was working as an insulator and electrical worker. On the basis of *that* occupational history of exposure to asbestos and his B-reading of her chest x-ray, Dr. Harron opined that claimant had asbestosis within a reasonable degree of medical certainty. No mention was made, however, of her employment with respondent employer or any occupational exposure during the time period of her employment with respondent employer.

Arkansas law at the time of claimant's alleged injury required clear and convincing evidence of a causal connection between the disease and the employment. *See* Ark. Code Ann. § 11-9-601(e)(1)(B) (Repl. 1996). Claimant has failed to offer any credible evidence that definitely establishes any causal connection between her employment and her asbestosis. The only evidence offered by claimant is her testimony that she *thinks* there was asbestos in the Tower Building and the supposition of Dr. Harron, in a letter to claimant's attorney dated January 29, 2001, that her employment with respondent employer *could have* contributed to asbestosis development if, in fact, asbestos was present in the building.

Even claimant's boyfriend, Warren Andrews, Jr., who was also a former employee of respondent employer and, in fact, was the foreman on the Tower Building job, admitted in his deposition that there was never any definitive determination as to what the substance was in the Tower Building or that there was actually asbestos exposure during that job.

Mere speculation that asbestos was present and that claimant was therefore exposed does not rise to the level of clear and convincing evidence that would definitively establish a causal connection between her employment with respondent employer and her asbestosis. As such, claimant has failed to meet her burden of proof.

The above claim is respectfully denied and dismissed.

IT IS SO ORDERED.

CYNTHIA ESTES ROGERS
Administrative Law Judge