BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F210326

RUTH WILKINSON, Employee	CLAIMANT
HARP'S FOOD STORES, INC., Employer	RESPONDENT
CANNON COCHRAN MANAGEMENT SERVICES, Carrier	RESPONDENT

OPINION FILED JANUARY 13, 2004

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

Claimant represented by CHARLES E. DAVIS, Attorney, Springdale, Arkansas.

Respondents represented by MICHAEL E. RYBURN, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On December 17, 2003, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on May 7, 2003, and a pre-hearing order was filed on that same date. 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 at all relevant times.

3. The respondent has controverted the within claim in its entirety.

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

1. Whether claimant suffered a compensable injury in the form of chemical burns.

2. Medical treatment.

3. Temporary total disability benefits from February 28, 2002 through November 2002.

4. Claimant's entitlement to permanent total disability benefits.

5. Attorney fee.

Subsequent to the pre-hearing conference the parties were unable to stipulate to an average weekly wage. Therefore, claimant's average weekly wage and compensation rate was added as an issue at the time of the hearing.

The claimant contends she suffered chemical burns to her neck, chest, scalp, shoulder, eyelids, both arms and forearms as a result of exposure to cleaning chemicals (oven cleaner) provided by her employer and utilized in performing required work related tasks.

The respondents contend that while the claimant alleges she developed a rash as the result of using an oven cleaner, there is no medical opinion relating the condition to the oven cleaner and the diagnosis is rash of unknown etiology. The medical records indicate a chronic appearing problem instead of one of short duration. The claimant was working until she was involved in a car wreck that prevented her from returning to work.

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 May 7, 2003, and contained in a pre-hearing order filed that same date, are hereby accepted as fact.

2. Claimant has failed to prove by a preponderance of the evidence that she suffered a compensable injury while employed by respondent.

FACTUAL BACKGROUND

_____The claimant went to work for the respondent in February 2002 in its bakery and deli department. Claimant's job responsibilities included waiting on customers, cooking, and cleaning the equipment. Claimant testified that in order to clean she used some four cleaners, including an oven cleaner, degreaser, glass cleaner, and one other cleaner whose name she could not remember. Claimant testified that after her first day of work with the respondent she developed itching on her arm. Claimant testified that after each day of work the itching progressively worsened. Claimant sought medical treatment for her itching condition on February 28, 2002, from Dr. Garland Murphy. Dr. Murphy has diagnosed claimant's condition as a chemical burn associated with direct contact irritation. He has opined that exposure to the chemical has produced changes in claimant's skin that is ongoing and chronic. In addition to Dr. Murphy, claimant has also been evaluated by Dr. Ubben, Dr. Ginger, and physicians at the Mayo Clinic.

Claimant has filed this claim contending that she suffered a chemical burn to her arms as a result of her employment with the respondent. She seeks payment of medical benefits, temporary total disability benefits, permanent total disability benefits, and a controverted attorney fee.

ADJUDICATION

As previously noted, claimant contends that her itching began on her first day to work for respondent after her use of various cleaners to clean cooking equipment. She testified that her condition progressively worsened after each day of work. Based upon claimant's testimony, it could be argued that claimant suffered a specific injury identifiable by time and place of occurrence as a result of her first day of employment or it could be argued that claimant's condition resulted from prolonged exposure and resulted in a gradual onset injury. However, for either of these two injuries claimant has the burden of

proving by a preponderance of the evidence that her injury arose out of and in the course of her employment. A.C.A. §11-9-102(4)(A). The phrase "arising out of the employment" refers to the origin or cause of the accident and the phrase "in the course of employment" refers to the time, place and circumstances under which the injury occurred. In order for an injury to arise out of the employment, it must be a natural and probable consequence or incident of the employment and a natural result of one of its risks. *J. & G. Cabinets v. Hennington*, 269 Ark. 789, 600 S.W. 2d 916 (Court of Appeals 1980).

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has failed to prove by a preponderance of the evidence that she suffered a compensable injury which arose out of and in the course of her employment with the respondent. Specifically, I find that claimant has failed to establish a causal relationship between her dermatitis and her employment with the respondent.

Appearing at the hearing and testifying on behalf of the claimant was Dr. Garland Murphy, the physician from whom claimant sought her initial medical treatment. Dr. Murphy testified that he believed claimant was initially exposed to a chemical at work which resulted in a burn causing contact irritation. Dr. Murphy went on to state that this exposure then produced changes in claimant's skin which is ongoing and chronic.

I find that Dr. Murphy's opinion is entitled to little weight for several reasons. First, I note that Dr. Murphy is not an unbiased witness since he is related to the claimant by marriage. Dr. Murphy's wife and the claimant's husband are brother and sister. Furthermore, and more importantly, Dr. Murphy admitted that he does not know what chemicals the claimant was exposed to while working for Harp's. It appears that the primary basis for his opinion with regard to causation is the temporal relationship between claimant's work for respondent and the dermatitis itself. However, absent some evidence as to the chemical claimant was using for the respondent, it is difficult to establish a causal

relationship between the use of those chemicals and the claimant's dermatitis. Indeed, that was the opinion of Dr. Cooper in a letter dated May 21, 2003. In his letter of that date Dr. Cooper indicated that he did not know what agent caused the claimant's rash. Dr. Cooper went on to state that without knowledge of the agent which caused the claimant's rash, there was no way to determine whether the condition was work related.

Finally, I find that the opinion of Dr. Murphy is entitled to little weight because I find that the remaining evidence is entitled to greater weight. As previously noted, claimant has also been evaluated at the Mayo Clinic for various physical problems including her dermatitis. At the Mayo Clinic claimant was evaluated by Dr. Mark Davis, a dermatologist. In a report signed November 5, 2002, Dr. Davis stated that claimant was tested with almost 300 different allergens. Dr. Davis discussed the claimant's reactions to those 300 allergens as follows:

> Ms. Wilkinson has had reactions to formaldehyde and formaldehyde releasers (quaternium-15, diazolidinyl urea). She has also had reactions to melamine formaldehyde, bioban, and MCI/MI. These are preservatives.
>
> It is likely that these reactions are of relevance to Ms. Wilkerson, as she is likely to have been working with things containing formaldehyde, formaldehyde releasers as well as other preservatives. In particular, bioban is in metal working fluids, including cutting fluids.

Although Dr. Murphy testified that he was not provided an MSDS sheet containing the chemical composition of the cleaners used by claimant, Dr. Davis' report of November 5 indicates that he did review an MSDS sheet given to him by the claimant regarding the oven and grill cleaner. Specifically, Dr. Davis stated:

> 4. Regarding her exposures at work, Ms. Wilkinson needs to study anything that she is coming in contact with to see if they contain the things to which she has been demonstrated to be allergic. She provides me with one MSDS sheet today which describes what is in her oven and grill cleaner, there are only three chemicals listed and none of these are the chemicals that she has been demonstrated to be allergic to. She needs to be particularly careful with the cutting fluids

> (the metals used to reduce friction and cool hard materials such as metals during the cutting process).

Thus, the only evidence presented in this case indicating the composition of the cleaner used by the claimant at the respondent indicates that claimant showed no reaction to those chemicals.

On the other hand, as noted in Dr. Davis' report, the claimant did show a reaction to bioban, a chemical contained in metal working fluids and cutting fluids. It is important to note that the claimant's husband works in the construction business as a heavy equipment operator. Prior to claimant's problems with her arms, the claimant cleaned her husband's clothes. Harry Wilkinson, the husband of the claimant, testified that as a heavy equipment operator he sometimes had to use a saw at work that was similar to a chain saw with a carbon blade that required oiling and lubricating in order to cut. Wilkinson testified that the substance would get on his clothing quite often and resulted in his having to use degreaser in order to clean his clothes.

In summary, in order to prove a compensable injury, claimant has the burden of proving by a preponderance of the evidence that her dermatitis is causally related to her employment with the respondent. Here, Dr. Murphy has opined that a causal relationship exists primarily upon a temporal relationship. However, Dr. Murphy acknowledges that he does not know the chemical make up of the cleaners used by the claimant while employed by the respondent. Furthermore, testing at the Mayo Clinic revealed that claimant was allergic to certain types of chemical agents. There is insufficient evidence that any of these agents were present in the cleaners claimant used while working for respondent. In fact, Dr. Davis, a dermatologist at the Mayo Clinic, testified that the chemicals contained in the oven and grill cleaner were not chemicals which had caused a reaction during claimant's testing. On the other hand, testing did indicate that claimant had reactions to chemicals which included metal working fluids and cutting fluids. As a heavy equipment

operator, claimant's husband, Harry Wilkinson, testified that he had to use a saw similar to a chain saw in order to cut metal rebar. The use of this saw required oil and lubrication which frequently got on his clothing. During the time period in which claimant worked for the respondent, she was laundering her husband's clothes which contained these chemicals and degreaser. Based upon this evidence, I find that claimant has failed to meet her burden of proving by a preponderance of the evidence that she suffered a compensable injury in the form of a chemical burn or dermatitis or any other type of similar injury while employed by the respondent.

ORDER

Claimant has failed to prove by a preponderance of the evidence that she suffered a compensable injury. 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