

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F500501

JERRY SLAUGHTER (DEC'D), EMPLOYEE	CLAIMANT
CITY OF HAMPTON, EMPLOYER	RESPONDENT
MUNICIPAL LEAGUE WC TRUST, CARRIER	RESPONDENT

OPINION FILED JULY 29, 2005

Hearing before Administrative Law Judge J. Mark White on June 23, 2005, in El Dorado, Union County, Arkansas.

Claimant represented by Mr. F. Mattison Thomas, III, Attorney at Law, El Dorado, Arkansas.

Respondents represented by Mr. J. Chris Bradley, Attorney at Law, North Little Rock, Arkansas.

STATEMENT OF THE CASE

On June 23, 2005, the above-captioned claim came on for a hearing in El Dorado, Arkansas. A pre-hearing conference was conducted on April 18, 2005, and a Prehearing Order was entered that same day. A copy of the April 18, 2005, Prehearing Order has been marked as Commission Exhibit No. 1 and made a part of the record herein without objection. At the hearing, the parties confirmed that the stipulations, issues, and respective contentions, as amended, were properly set forth in the Prehearing Order.

The parties stipulated that the Arkansas Workers' Compensation Commission has jurisdiction of this claim; that the employee-employer-carrier

relationship existed at all relevant times, including November 17, 2004; that the claimant died January 15, 2005; and that the claimant earned wages sufficient to entitle him to the maximum compensation rates. At the hearing, the parties further stipulated that the alleged injury occurred on November 17, 2004.

The parties agreed that the issues to be presented were whether the claimant sustained a compensable injury leading to his death; whether the claimant was entitled to temporary total disability benefits; whether the medical treatment received by the claimant was reasonably necessary in connection with a compensable injury; whether the claimant's estate is entitled to funeral expenses; whether the claimant's spouse is entitled to death benefits; and controversion and attorney's fees.

The claimant's estate contends that on or about November 17, 2004, while the claimant was working for the City of Hampton water department, a valve cracked on a chlorine bottle causing the claimant to inhale chlorine gas; that the claimant continued to work while his health deteriorated; that the claimant was ultimately placed in ICU for chlorine gas exposure and ultimately died from the damage to his lungs; and that the claimant was entitled to medical benefits, TTD benefits from the day he missed work until the date of his death, funeral expenses, and death benefits for his surviving spouse, LeRonda Slaughter.

The respondents contend that the claimant did not sustain a compensable injury.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing 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 hereby made in accordance with Ark. Code Ann. § 11-9-704:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The stipulations agreed to by the parties are reasonable and are hereby accepted as fact.
3. The claimant's estate has failed to prove by a preponderance of the evidence that the claimant's respiratory accident is the major cause of his physical harm.
4. The claimant's estate has therefore failed to prove by a preponderance of the evidence that the claimant sustained a compensable injury.
5. The respondents have controverted this claim in its entirety.

DISCUSSION

I. History

The claimant worked for the City of Hampton, maintaining the city's water and sewer systems, along with his father, Monroe Slaughter, and a friend, Buddy Hannegan. The three employees were supervised by the City's Chief of Police, Steve Daniell. Sometime in the late fall of 2004, the claimant, his father and Hannegan entered a building underneath the City's water tower to replace a chlorine cylinder. The three had only one breathing mask among them, and Monroe Slaughter wore the mask into the building. The three men hooked up a new chlorine cylinder, and when the claimant opened the cylinder valve, chlorine gas "spewed everywhere," as Monroe Slaughter described it. He and Hannegan agreed that the claimant bore the brunt of the leak, as it expelled from the tank directly into his face. Hannegan and the claimant ran out of the building, while Monroe Slaughter closed the valve. It was later determined that there was a crack between the cylinder and its valve that allowed the gas to escape.

None of the men sought medical treatment at the time. They did report the incident to Daniell, though the testimony is conflicting as to when they reported it. Monroe Slaughter and Hannegan testified they had some minor symptoms and breathing difficulties over the next few days. They testified the claimant, however,

showed more severe symptoms and that he at some point took off from work because of his condition. Attendance records introduced by the respondents reflect that the claimant took sick leave once on November 19 and one vacation day on November 24, and that the claimant did not return to work after December 9. The parties stipulated at the end of the hearing that the incident with the chlorine gas cylinder occurred on November 17, 2004.

The claimant's widow, La Ronda Slaughter, testified that on November 17, the claimant returned home that evening and said to her, "Baby, I liked to have got killed today." She testified that he was panting and having difficulty breathing, and that he began to complain of a runny nose and watery eyes a couple of days later. She testified that he refused to go to the doctor, and that he grew worse over the following days. She said "he stayed the same way for a little while, and then it got worse. And then I had to make him go to the doctor."

The claimant finally went to see Dr. Robert Watson on December 9, some three weeks after the stipulated accident date. Dr. Watson recorded the chief complaint as "shortness of breath and chest congestion", with a history of "going on for about two weeks." X-rays revealed no acute infiltrates in the lungs, but pulmonary function tests did indicate his breathing was obstructed. Dr. Watson did not mention the chlorine gas exposure in his notes, though the claimant's widow

testified she was present at this examination and that the claimant did inform Dr. Watson of the exposure. Dr. Watson gave his impression as upper respiratory infection, acute bronchitis, restricted lung disease, and shortness of breath. He prescribed medication and encouraged the claimant to stop smoking. The claimant indicated he would try to do so after the Christmas holidays.

The claimant returned for treatment on December 22, and his condition had worsened. Dr. Watson noted that the amount of oxygen in his blood (pulse ox) had dropped from 92% to only 60% since December 9, and that his pulmonary function tests had significantly deteriorated as well. Dr. Watson admitted the claimant into the hospital for treatment with diagnoses of tachypnea, hypoxia, chronic obstructive pulmonary disease (COPD) exacerbation, and tobacco abuse. Again, no mention was made of chlorine gas exposure in the initial admittance documents.

The claimant's primary care was then transferred to a respiratory specialist, Dr. Richard Dietzen. On December 23 Dr. Dietzen performed a bronchoscopy to confirm a diagnosis of pneumocystis carinii pneumonia – pneumocystis carinii is a parasite that attaches to the lungs and is an infection to which HIV-positive individuals are particularly susceptible. One diagnostic test revealed the presence of this parasite, but other tests proved negative. X-rays taken December 25 revealed infiltrates in the lung – the December 9 x-rays had revealed none. In addition,

diagnostic tests eventually revealed the claimant had human immunodeficiency virus (HIV), along with a correspondingly weak immune system and a number of other infections. At some point Dr. Dietzen became aware of the chlorine gas exposure and adjusted his treatment accordingly.

The claimant's respiratory condition rapidly deteriorated over the following days. He remained in the hospital and was treated for respiratory failure until his death in the afternoon of January 15. The claimant and his widow had been married in the hospital on January 5; they had only been living together at the time of the initial chlorine gas exposure.

In his final report, Dr. Watson gave his discharge diagnoses as respiratory failure, pneumonia, end-stage HIV, COPD, and chemical inhalation. The record contains two death certificates signed by Dr. Watson. The typewritten certificate submitted by the claimant from Dr. Watson's records reflects the "immediate cause" of death as "respiratory failure," with underlying causes of "pneumonia bacterial," "pneumonia fungal," and "chemical inhalation." A box is checked under "manner of death" indicating "could not be determined." The certificate is signed by Dr. Watson. The respondents introduced a certificate purportedly from the Arkansas Department of Health which appears to be identical to that submitted by the claimant, except for two handwritten alterations. Under the category "other

significant conditions contributing to death,” someone has handwritten “HIV.” Under the category “manner of death,” the original mark for “could not be determined” has been obliterated with Wite-Out or some similar substance, and a hand-written mark has been placed next to “natural.” It is unknown who made these handwritten alterations subsequent to Dr. Watson’s signing of the certificate. For this reason, I give no weight to the death certificate submitted by the respondents.

II. Adjudication

For the claimant to establish a compensable injury as a result of a specific incident, the following requirements of Ark. Code Ann. § 11-9-102 (4)(A)(i) must be established: (1) proof by a preponderance of the evidence of an injury arising out of and in the course of employment; (2) proof by a preponderance of the evidence that the injury caused internal or external physical harm to the body which required medical services or resulted in disability or death; (3) medical evidence supported by objective findings, as defined in Ark. Code Ann. § 11-9-102(16), establishing the existence and extent of the injury; and (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and is identifiable by time and place of occurrence. *Ford v. Chemipulp Process, Inc.*, 63 Ark. App. 260, 977 S.W.2d 5 (1998).

If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing the compensability of a claim, compensation must be denied. *Id.*

Although the present claimant's injury undoubtedly satisfies each of the above elements, respiratory accidents such as the injury herein are subjected to a more restrictive burden of proof by Ark. Code Ann. § 11-9-114:

(a) A cardiovascular, coronary, pulmonary, respiratory, or cerebrovascular accident or myocardial infarction causing injury, illness, or death is a compensable injury only if, in relation to other factors contributing to the physical harm, an accident is the major cause of the physical harm.

(b)(1) An injury or disease included in subsection (a) of this section shall not be deemed to be a compensable injury unless it is shown that the exertion of the work necessary to precipitate the disability or death was extraordinary and unusual in comparison to the employee's usual work in the course of the employee's regular employment or, alternately, that some unusual and unpredicted incident occurred which is found to have been the major cause of the physical harm.

The question, then, is whether the chlorine gas exposure described by the witness testimony – obviously an “unusual and unpredicted incident” – constitutes “the major cause of the physical harm” incurred by the claimant, as compared to the “other factors contributing to the physical harm.” The record contains the deposition testimony of two doctors as to this question of causation: that of Dr. Richard

Dietzen, the respiratory specialist who treated the claimant in the hospital; and that of Dr. Jimmie Gilbert, a consulting pulmonologist retained by the respondents to review the medical records and offer his opinion.

Dr. Gilbert's ultimate opinion was that the claimant's respiratory failure and death was ultimately caused by a parasitical infection, pneumocystis carinii. Dr. Gilbert testified, and Dr. Dietzen agreed, that HIV-positive individuals such as the claimant are at higher risk of contracting this parasite. Both doctors also agree there is no evidence in the literature to suggest a connection between chlorine gas exposure and pneumocystis carinii. Given this infection and the claimant's pre-existing problems, Dr. Gilbert opined that the chlorine gas exposure played no "major role" in the claimant's death.

Dr. Dietzen testified that he and the other treating physicians operated under a "presumption" of some sort of infection, in light of the claimant's HIV-positive status, and the medical records do reflect an early diagnosis of pneumocystis carinii. Nonetheless, Dr. Dietzen opined that the claimant in fact did not have this parasite, and that the one positive test result was a false-positive. In making this conclusion, Dr. Dietzen cited the multiple diagnostic tests that proved negative for pneumocystis carinii; the failure of the claimant to respond to treatment for pneumocystis carinii; and the lack of clinical correlation to the claimant's history and

condition. On balance, I find Dr. Dietzen's opinion on this point to be more credible and entitled to greater weight.

Dr. Dietzen's ultimate opinion was that the chlorine gas exposure "presumably set a process in motion" that led to the claimant's respiratory failure and eventual death. Dr. Dietzen described the process as one "where his lungs began to deteriorate with alveolar damage, bronchiolar damage, that's the very small airways, bronchitis and this was in the setting of decreased defenses due to HIV and prior smoking." He later explained the mechanism of injury by testifying that chlorine gas is an "irritant" to the lungs, and that once it reached the claimant's lungs it formed hydrochloric acid within the tissues, causing an inflammation of the airways.

On balance, I find more credible and place greater weight on Dr. Dietzen's opinion as to causation and the mechanism of the claimant's injury and death. Nonetheless, Dr. Dietzen forthrightly testified that the chlorine gas exposure was but one factor in the claimant's respiratory failure:

A. The physical findings could have a multitude of explanations. The disease process could have a multitude of explanations. My opinion is that the contribution by the chlorine gas inhalation into the evolution of the process that led to his death. [sic]

Q. So what I think I hear you saying is that the chlorine inhalation may have aggravated his underlying

condition?

A. Yes.

Q. May have precipitated the aggravation or started things off more?

A. Yes.

Q. If you were to take those items that Mr. Slaughter already had in play and put them on a balance like you see with the scales of justice and you piled them up on one side and then you put the chlorine as a causative factor on the other side which side would weigh heavier?

A. The heaviest weight in your analogy would lay to the pre-existing factors.

Q. So the chlorine would play a role in Mr. Slaughter's illness but it would not be the major cause, meaning more than fifty percent of the problems Mr. Slaughter had?

A. It could be as what we're dealing with is the straw that breaks the camel's back. Where you can phrase it as you did where you're weighing the contributory causes or you could phrase as you had these contributory causes [sic] was this something that tipped him over to become symptomatic and therefore led to his hospitalization.

Q. Well if it were the tipping point that would be dependant upon something to be tipped?

A. Yes.

The pre-existing factors identified by Dr. Dietzen in the course of his

deposition include emphysema, COPD, and HIV. Dr. Dietzen testified that the chlorine gas exposure was a “significant inciting event,” and that “as an inciting event I would say greater than fifty percent. As a cause among multitude of causes it’s one of a multitude of causes and whether or not it is the majority cause of his death, I don’t know.” He testified that his opinion was based on his impression that the claimant did not return to work after the initial chlorine gas exposure; when informed that the claimant had in fact returned to work for a time, Dr. Dietzen acknowledged that this fact would suggest the exposure was less of an inciting event and that he would be “less comfortable” opining that the gas exposure was the major cause of death.

I accept Dr. Dietzen’s opinions herein as plausible and persuasive, including his opinion that the chlorine gas exposure was but one of many causal factors, including HIV and pre-existing lung damage caused by smoking. Under the stricter burden of proof discussed above, the claimant must prove that the chlorine gas exposure was the major cause of his physical harm, i.e. his death. Neither Dr. Dietzen nor any other doctor has opined that the exposure was the major cause of his death. The medical evidence suggests that while the chlorine gas exposure may have initiated the process that led to the claimant’s death, the process was more severe than it might have been in the absence of the unrelated pre-existing

conditions. As Dr. Dietzen testified, this incident occurred “in the setting of decreased defenses due to HIV and prior smoking,” and these pre-existing conditions appear to have predisposed the claimant to a much more severe, and ultimately deadly, disease process. These pre-existing conditions constitute “other factors contributing to the physical harm” as described in Ark. Code Ann. § 11-9-114. Moreover, it appears to me that another contributing factor was the claimant’s refusal to seek medical treatment until several weeks after his exposure. Given the evidence set forth above, I cannot reasonably find that the chlorine gas exposure sustained by the claimant was the major cause of his physical harm and death.

I find that the claimant’s estate has failed to prove by a preponderance of the evidence that the claimant’s respiratory accident is the major cause of his physical harm. Therefore, I conclude that the claimant’s estate has failed to prove by a preponderance of the evidence that the claimant sustained a compensable injury.

In making this finding, I note the long line of cases in which claimants have satisfied the major cause requirements of § 11-9-114 despite their pre-existing conditions. *See, e.g., Kimbrell v. USA Truck, Inc.*, A.W.C.C. F300739 (July 7, 2005). However, I cannot find any such case that does not involve a heart attack, stroke, or similar condition. These cases are easily distinguishable from the instant case because of the nature of injury.

A heart attack is an injury that will invariably result in severe injury or death regardless of the cause. If a work incident is the major cause of an attack by precipitating the attack, then the work could reasonably be assumed to be the major cause of the resulting harm. In this case, however, the physical harm was far more severe because of the claimant's pre-existing conditions. Had the claimant sustained this chlorine gas exposure in the absence of the pre-existing conditions, the physical harm incurred would have likely been less. Therefore, I cannot find that the chlorine gas exposure is the major cause of the physical harm incurred by the claimant.

AWARD

The claimant's estate has failed to prove by a preponderance of the evidence that the claimant sustained a compensable injury. Therefore, this claim for benefits must be, and it hereby is, denied and dismissed.

IT IS SO ORDERED.

HON. J. MARK WHITE
Administrative Law Judge