

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F409075

THAYER T. TUCKER, EMPLOYEE	CLAIMANT
CONESTOGA WOOD SPECIALISTS CORPORATION, EMPLOYER	RESPONDENT
TRAVELERS PROPERTY & CASUALTY COMPANY OF AMERICA, INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED MARCH 18, 2005

Hearing before Chief Administrative Law Judge David Greenbaum on March 7, 2005, at Little Rock, Pulaski County, Arkansas.

Claimant appearing pro se.

Respondents represented by Mr. Phillip Cuffman, Attorney-at-Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted March 7, 2005, to determine whether the claimant sustained a compensable injury within the meaning of the Arkansas Workers' Compensation Laws.

A prehearing conference was conducted in this claim on February 2, 2005, and a Prehearing Order was filed on said date. At the hearing, the parties announced that the stipulations, issues, as well as their respective contentions were properly set out in the Prehearing Order subject to an additional stipulation concerning the applicable compensation rates. A copy of the Prehearing Order was introduced as "Commission's Exhibit 1" and made a part of the record without objection.

It was stipulated that the employment relationship existed between the parties beginning on or about May 27, 1992, and continuing through May 19, 2001; that the claimant's first formal notice of a claim was the filing of a claim form on September 2, 2004; that the claimant's average weekly wage was \$434.00, entitling him to compensation rates of \$289.00 per week for temporary total disability and \$217.00 per week for permanent partial disability; and that respondents have controverted this claim in its entirety.

By agreement of the parties, the primary issue presented for determination concerned compensability. The extent of claimant's injury, and/or entitlement to disability benefits, if any, was, by agreement, specifically reserved.

Claimant contended, in summary, that he sustained a gradual onset lung injury and/or occupational disease as the result of exposure to sawdust at the workplace; that respondents should be held responsible for all past medical treatment, including prescription medications, together with continued, reasonably necessary medical treatment, specifically prescription medication necessary to treat his COPD (Chronic Obstructive Pulmonary Disease). The claimant pointed out that he was already receiving social security disability, while reserving the issue of the extent of disability for the within claim, pending a determination on compensability.

The respondents contended that the claimant did not sustain an occupational disease as the result of exposures at the workplace. Respondents further maintained that the claimant never reported an injury during the term of his

employment, while asserting that the claim was barred under A.C.A. §11-9-702(2), as well as a lack of notice required by A.C.A. §11-9-603(a)(2)(A). Alternatively, respondents contended that, if the claim was found compensable, it was entitled to a credit against any long-term disability benefits that the claimant may have received. No evidence was introduced relative to such benefits.

The claimant testified in his own behalf. Gaylon Pearson, respondents' safety manager, was called as a witness by the respondents. The record is composed solely of the transcript of the March 7, 2005, hearing containing a joint medical exhibit.

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 Ark. Code Ann. §11-9-704:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations agreed to by the parties are hereby accepted as fact.
3. The within claim is barred by the Statute of Limitations.
4. Even if the Statute of Limitations was not a bar to this claim, which is inconsistent with the findings and conclusions reached herein, nevertheless,

the claimant has failed to establish, by a preponderance of the credible evidence, that his COPD arose out of and during the course of his employment with Conestoga Wood Specialists Corporation.

DISCUSSION

_____Ark. Code Ann. §11-9-702(a)(2) provides that a claim for compensation for disability on account of injury which is either an occupational disease or an occupational infection, shall be barred unless filed with the Commission within two (2) years from the date of the last injurious exposure to the hazards of the disease or infection.

Further, Ark. Code Ann. §11-9-603(a)(2)(A) provides that written notice shall be given to the employer of an occupational disease by the employee, or someone in his or her behalf, within ninety (90) days after the first distinct manifestation thereof.

The facts in this case are basically undisputed. The claimant maintains that his COPD was causally related to exposure to sawdust at the workplace. The claimant testified that he began developing symptoms consistent with COPD as early as 1996 or 1997. The claimant never reported any problems to his employer. It is further undisputed that the claimant was a heavy cigarette smoker. The claimant voluntarily left the respondents' employment on May 19, 2001. He applied for and began receiving social security disability benefits, primarily, related to his COPD. The claimant filed a claim for workers' compensation benefits on

September 2, 2004.

If an injury becomes known to a claimant, his lack of knowledge as to the law on filing of claims is no defense, since one in full possession of his mental faculties should know that he should file a claim if he has an injury. *Sanderson & Porter vs. Crow*, 214 Ark. 416, 216 S.W.2d 796 (1949).

The claimant candidly acknowledged that he, at all times, attributed his COPD to exposure to sawdust and could offer no rational explanation for why he waited more than three (3) years after his last exposure and more than seven (7) years after developing symptoms to file a claim for workers' compensation benefits. Clearly, this claim is time-barred.

Even if the claim is not barred by the Statute of Limitations, which is inconsistent with the findings and conclusions reached herein, nevertheless, the claimant has failed to establish, by a preponderance of the credible evidence, that his COPD is related to his employment. The only medical opinion addressing compensability is a February 16, 2005, report from claimant's family physician, Dr. Phillip A. Tracy. Dr. Tracy opined that the claimant suffered from COPD with moderate obstructive changes. Dr. Tracy stated that he felt this to be secondary to environmental factors such as dust; however, did not attribute the claimant's COPD specifically to the inhalation of sawdust, did not discuss the claimant's long-term smoking habits or other factors, but merely opined that it was secondary to environmental factors such as dust.

Medical evidence is not ordinarily required to prove causation, *Wal-Mart Stores, Inc., vs. Van Wagner*, 337 Ark. 443, 990 S.W.2d 522 (1999), but, if medical opinion is offered on causation, the opinion must be stated within a reasonable degree of medical certainty. *Krudup vs. Regal Ware, Inc.*, 341 Ark. 804, 20 S.W.3d 900 (2000). A claimant bears the burden of proof in establishing entitlement to benefits under the Workers' Compensation Act and must sustain that burden by a preponderance of the evidence. Ark. Code Ann. §11-9-102(4)(E)(i) (Repl. 2002); *Clardy vs. Medi-Holmes, Ltc. Servs.*, 75 Ark. 156, 55 S.W.3d 791 (2001).

It is well-settled that claimant has the burden of proving the job-relatedness of any alleged injury, without the aid of any kind of presumption in his favor. *Pearson vs. Faulkner Radio Service*, 220 Ark. 368, 247 S.W.2d 964 (1952); *Farmer vs. L.H. Knight Company*, 220 Ark. 333, 248 S.W.2d 111 (1952). The burden of proof claimant must meet is preponderance of the evidence. *Voss vs. Ward's Pulpwood Yard*, 248 Ark. 465, 425 S.W.2d 629 (1970). Under prior law, it was the duty of the Commission to draw every legitimate inference in favor of the claimant and to give claimant the benefit of the doubt in making factual determinations. However, current law requires that evidence regarding whether or not claimant has met his burden of proof be weighed impartially, without giving the benefit of the doubt to either party. Arkansas Code Annotated §11-9-704(c)(4); *Wade vs. Mr. C.Cavanaugh's*, 298 Ark. 363, 768 S.W.2d 521 (1989); *Fowler vs. McHenry*, 22 Ark. App. 196, 737 S.W.2d 663 (1987).

It would require sheer speculation and conjecture to attribute the claimant's physical problems to his employment. Conjecture and speculation, however plausible, cannot be permitted to supply the place of proof. *Dena Construction Company vs. Hearndon*, 264 Ark. 791, 575 S.W.2d 155 (1979); *Arkansas Methodist Hospital vs. Adams*, 43 Ark. App. 1, 858 S.W.2d 125 (1993).

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that the claimant has failed to prove that he is entitled to any compensation benefits. In addition, this claim is barred by the Statute of Limitations. Accordingly, the within claim is hereby respectfully denied and dismissed.

IT IS SO ORDERED.

DAVID GREENBAUM
Chief Administrative Law Judge