

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F413059

GARY W. WINTER

CLAIMANT

CITY OF MOUNT IDA

RESPONDENT EMPLOYER

MUNICIPAL LEAGUE WC TRUST

RESPONDENT CARRIER

ORDER AND OPINION FILED OCTOBER 13, 2005

Hearing before Administrative Law JUDGE LINDA K. MARSHALL.

Claimant represented by the HONORABLE J. SKY TAPP, Attorney at Law, Hot Springs, Arkansas.

Respondents represented by the HONORABLE J. CHRIS BRADLEY, Attorney at Law, North Little Rock, Arkansas.

STATEMENT OF THE CASE

The above claim came on for a hearing in Hot Springs, Arkansas on September 9, 2005. A prehearing conference was held and a prehearing order was filed on July 6, 2005. At the prehearing conference, the parties agreed to the following:

1. There was an employer-employee relationship on January 25, 2004.
2. The compensation rate is \$259.

The claimant contends that he sustained a compensable injury as the result of chlorine gas poisoning on January 25, 2004 and is entitled to medical benefits and temporary total disability benefits from February 29, 2004, to a date to be determined and to attorney's fees. The claimant contends the injury was the result of a specific incident but, alternatively, was gradual onset. All other issues are specifically reserved.

Respondents contend that the claimant did not sustain a compensable injury when he was employed by the city. Respondents contend the claimant's medical problems are due to other causes not related to the claimant's work. Alternatively, if the claim is found to be compensable, respondents are not responsible for any benefits until notice was provided.

ISSUES TO BE LITIGATED

1. Compensability.
2. Notice.
3. Medical benefits.
4. Temporary total disability benefits.
5. Attorney's fees.

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 of this claim.
2. There was an employer-employee relationship on January 25, 2004.
3. The compensation rate is \$259.

4. The preponderance of evidence provides the employer had notice of a chlorine leak incident on January 25, 2004.

5. The claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury arising out of and in the course of his employment from chlorine exposure on January 25, 2004.

6. Respondents have controverted all benefits sought herein.

DISCUSSION

The claimant, 52 years old, has worked at the water department for the respondent employer since August 21, 2000. On January 25, 2004, the claimant walked into the water plant and found a hose had blown off the injector and water and chlorine were being exposed into the building. The claimant immediately attempted to contact Bruce Carmack, his immediate supervisor and could not get him and next contacted emergency services. The claimant described his next actions:

So, when I got back over to the water plant, the scuba air pack was inside the building. And, according to state law, it's supposed to be located out away from the building in another building. But I had to go in there and get it and bring it out. And I put it on, and I don't remember whether it was functioning properly or was full of air. I don't believe it was. But I put it on, and I went down and started trying to find another o-ring to put back on there and get that hose back on. (T., p. 109, lines 18-25; p. 110, line 1.)

The claimant remembered turning off the chlorine tanks before he attempted to repair the line and he remembered one of the fireman, Farron, helped him repair the line. The claimant testified:

A [Witness] They told me I needed to get out of the building. It seems like I remember I had my – I thought I had

my scuba air pack on at that time, but maybe it had already run out of air and stopped working. I don't remember.

Q [Mr. Tapp] Did you grab anything else, to your remembrance?

A I got the next best thing I knew of and put on, I guess. They said I had a dust mask on. I guess that's the best thing I could get a hold of.

Q Gary, why didn't you just immediately try to get out instead of trying to keep putting that together like that?

A Well, my job is to get that thing fixed. I just about had it fixed whenever the emergency guys got there. All we had to do was finish shoving that thing on. (T., p. 112, lines 7-22.)

The claimant seemed to remember the mayor telling him to go home and discard his clothes and take a shower and take a few days off work. The claimant returned to work for a period of time but continued to have problems with the math part of his job. The claimant also had no memory of refusing medical treatment the day of the incident. The claimant testified that his biggest problems following the chlorine incident is his impaired memory and breathing problems. The claimant testified that he wanted to repair the problem because he was afraid he would be fired because of a bad relationship with the mayor.

David White, mayor of the City of Mount Ida in January 2004, testified that he went to the water plant on January 25, 2004, after hearing of the chlorine leak and saw the claimant and the fire department personnel. Mr. White remembered seeing the claimant breathing hard with a red face and remembered he would not seek medical treatment.

In order to prove a compensable injury as a result of a specific incident that is identifiable by time and place of occurrence, a claimant must establish (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 harm to the body that required medical services; (3) medical evidence supported by objective findings establishing the injury; and (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and identifiable by time and place of occurrence. Ark. Code Ann. §11-9-102(4) (Repl. 2003). If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing the compensability of the claim, compensation must be denied. *Mikel v. Engineering Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

In the present case, it is undisputed there was a chlorine leak accident on January 25, 2004, where the claimant was exposed. The claimant's superior, the mayor of the City of Mount Ida, was at the scene of the leak after being notified of a leak, as was the fire department and the coordinator for the Office of Emergency Management for Montgomery County. Respondents asserted a notice defense to the claim; however, Ark. Code Ann. §11-9-701 provides that the employee should report the injury to the employer on the prescribed forms unless the injury is made known to the employer immediately after it occurs. With the supervisor being present at the time of the leak, I find that the employer had immediate notice of an incident involving the claimant.

The claimant must establish a compensable injury by medical evidence supported by objective findings. Ark. Code Ann. §11-9-102(4)(D). “Objective findings” are those findings which cannot come under the voluntary control of the patient. Ark. Code Ann. §11-9-102(16). The claimant must also prove a causal connection between the work-related accident and the later disabling injury. *Bates v. Frost Logging Co.*, 38 Ark. App. 36, 827 S.W.2d 664 (1992).

In the present case, I find the claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury related to chlorine exposure on January 25, 2004, supported by objective findings. The claimant in the present case did not immediately seek medical attention following the chlorine leak incident. In fact, the claimant’s testimony was that he took a few days off and then returned to work full time and continued to work until the end of February 2004. He left his employer at that time because he was counseled by his immediate supervisor, Bruce Carmack, about his problems with the math part of the job. Mr. Carmack testified that the claimant took his distribution certificate off the wall and said, “I quit.” (T. 131.) Mr. Carmack presented testimony that the claimant’s math problems with his work were the same before the leak incident as after the incident. The only difference in the claimant’s behavior that Mr. Carmack was able to articulate was that the claimant was slower.

The claimant first sought medical treatment following the chlorine leak incident on March 12, 2004, when he went to the emergency room at St. Joseph’s Mercy Health Center with erratic behavior problems and was referred to the Veterans Hospital at that time. The claimant was admitted to the Veterans Hospital for increased abnormal behavior, confusion and suicidal thoughts. The claimant had numerous medical

records in evidence, most from the Veterans Hospital in Little Rock, but little is noted in these records of the chlorine exposure and possible problems specifically related to exposure.

The claimant had some pre-existing health concerns, to include an April 4, 2002, medical record which indicated that he has mild emphysema and shortness of breath and an April 15, 2002, report reveals he suffers from chronic obstructive pulmonary disease along with other health problems. An office note dated August 17, 1999, revealed the claimant had picked up 220 narcotics in a 20-day period.

The March 15, 2004, VA report indicates that "Amphetamine abuse could produce the sx's observed by family over past two weeks [sic] of mania and psychosis." Resp. Exh. No. 1, p. 35. A progress note from the VA Hospital, which is identified as Respondent's Exhibit No. 1, page 72, makes mention of the chlorine exposure as follows: "Note concern over possible chlorine exposure at work for city in water treatment and misc jobs, but APN reports this has not been confirmed as significant." Further, a discharge summary from the VA Hospital dated June 17, 2004, provides: "Since previous dictation Mr. Winter has made remarkable improvements. He is now able to function in all areas without difficulty. He has been attending and participating in the Step Up Program and has done well. There appears to be no trace of the dementia like behavior he was previously exhibiting...." (Resp. Exh. No. 1, p. 112.)

In summary, there was no medical evidence that provided objective findings and then a causal connection between the claimant's dementia problems or breathing problems and the chlorine exposure. Where the only evidence of a causal connection is speculative and an indefinite medical opinion, it is insufficient to meet the claimant's

burden of proving causation. *Crudup v. Regal Ware, Inc.*, 341 Ark. 804, 20 S.W.3d 900 (2000); *K11 Construction Co. v. Crabtree*, 78 Ark. App. 222, 79 S.W.3d 414 (2002).

The claimant has contended in the alternative that he sustained a gradual onset injury. Such an injury must likewise be shown to have arisen out of and in the course of employment. *Wal-Mart Stores v. Leach*, 74 Ark. App. 231, 48 S.W.3d 540 (2001).

Therefore, my findings above preclude the claimant from proving any compensable injury, either gradual onset or specific incident.

ORDER

The claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury arising out of and in the course of his employment from chlorine exposure on January 24, 2004. The claim for benefits is respectfully denied and dismissed.

IT IS SO ORDERED.

**LINDA K. MARSHALL
ADMINISTRATIVE LAW JUDGE**