

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F402680

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| CAROL D. GOLDEN, EMPLOYEE | CLAIMANT |
| OSCEOLA SCHOOL DISTRICT #1, EMPLOYER | RESPONDENT |
| RISK MANAGEMENT RESOURCES, INSURANCE CARRIER/TPA | RESPONDENT |

OPINION FILED JUNE 22, 2006

Hearing before Chief Administrative Law Judge David Greenbaum on May 5, 2006, at Luxora, Mississippi County, Arkansas.

Claimant represented by Mr. Mac Golden, Attorney-at-Law, Little Rock, Arkansas.

Respondents represented by Mr. Mark A. Mayfield, Attorney-at-Law, Jonesboro, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted May 5, 2006, 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 22, 2006, and a Prehearing Order was filed on February 23, 2006. At the hearing, the parties announced that there were no stipulations beyond those contained in the Prehearing Order. A copy of the Prehearing Order was introduced as "Commission's Exhibit 1" without objection.

It was stipulated that the employment relationship existed between the parties at all relevant times through at least November 20, 2003; that the claimant earned sufficient wages to entitle her to the maximum compensation rates of

\$440.00 per week for temporary total disability and \$330.00 per week for permanent partial disability in the event the claim was found compensable; and that the respondents had controverted the claim in its entirety for purposes of attorney's fees.

At the prehearing conference, the parties agreed that the primary issue to be presented for determination concerned compensability. If overcome, claimant's entitlement to associated benefits must be addressed. In addition, at the prehearing conference, the claimant raised an issue concerning whether the employer should be assessed a penalty for possible retaliatory discrimination for filing the within claim pursuant to A.C.A. §11-9-102. However, the claimant dismissed her request that the employer be assessed any penalty for discrimination for filing a claim as an issue prior to the hearing.

Both parties stated that their respective contentions were properly set out in the Prehearing Order, save, any contentions related to penalties for retaliatory discharge which, again, was withdrawn as an issue.

Claimant contended, in summary, that she sustained a compensable injury and/or occupational disease as the result of consistent exposure to mold and other toxic exposures at the workplace; that respondents should be held responsible for all hospital, medical, and related expenses as the result of her injury and/or disease, together with continued, reasonably necessary medical treatment; that she was entitled to temporary total disability benefits for the period beginning November 20,

2003, and continuing through July 16, 2004; together with a controverted attorney's fee on any benefits awarded. The claimant specifically reserved the issue of permanent disability pending a determination on the primary issue of compensability. During the hearing, the claimant amended her contentions to request temporary total disability for the period beginning November 20, 2003, and continuing through April 5, 2004, less credit for any dates that she worked during this period of time for the employer herein. (Tr.78-79)

The respondents' contentions, including affirmative defenses, are set out below:

- (a) Claimant did not suffer a compensable injury arising out of and in the course of her employment;
- (b) To the extent claimant experiences genuine health problems and symptoms, such problems and symptoms are the result of a non-compensable, ordinary disease of life to which the general public is exposed;
- (c) Alternatively, in the event it is determined claimant suffers from an occupational disease, any compensation otherwise payable should "...be reduced and limited to the proportion only of the compensation that would be payable if the occupational disease were the sole cause of the disability or death as the occupational disease, as a causative factor, bears to all the causes of the disability or death." (A.C.A. §11-9-601(c)(1);
- (d) Alternatively, respondents contend the claimant was not disabled and is not entitled to the extent of TTD and PPD benefits she seeks even in the event the claim is found compensable; and
- (e) That the statute of limitations bars claimant from recovering any benefits for the alleged 2002 injury, the existence and compensability of which respondents further deny.

In addition to the claimant, Evelyn Smith, Tom Taylor, Tony Lambert, Joe

Felton, and Rose Wright were called as witnesses on the claimant's behalf. Howard McNeal, Jerry Jernigan, Billy R. Daniels, and Milton Washington were called as witnesses for the respondents. The record in this claim is composed of the transcript of the May 5, 2006, hearing containing numerous exhibits which were introduced without objection, including medical records and non-medical records, together with the evidentiary deposition of Dr. David Lewis, introduced as "Joint Exhibit C" and retained in the Commission file in bound form.

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 claimant has failed to prove that she sustained a compensable injury as defined by Ark. Code Ann. §11-9-102(4)(A)(i) (Repl. 2002).
4. The claimant has failed to prove, by a preponderance of the credible evidence, that she sustained an injury within the meaning of Ark. Code Ann. §11-9-102(4)(A)(iv) (Repl. 2002).

5. The claimant has failed to prove, by a preponderance evidence, that her respiratory injury and/or illness was the major cause of her physical harm which resulted in disability or need for medical treatment.
6. The claimant has failed to prove that she sustained an occupational disease within the meaning of Ark. Code Ann. §11-9-601 (Repl. 2002).

DISCUSSION

As will be reflected further below, the record in this case is replete with inconsistencies and contradictions. Further, as reflected by the claimant's contentions, she maintains that she sustained an injury and/or occupational disease as the result of consistent exposure to mold and other toxic exposures at the workplace. The claimant began working for the Osceola School District in February, 2000. The record reflects that the claimant suffered from seasonal allergies prior to beginning her employment with said employer. The record reflects that the claimant was exposed to numerous allergens outside the workplace. The claimant was a smoker which aggravated her condition. She had a strong family history of allergies. In addition, the record reflects that the claimant did not attribute her physical problems to any specific aggravating exposure, but, rather, to a multitude of exposures, including, but not limited to wet carpet in her office, mold allegedly created from the heating and air conditioning units, carbon monoxide leakage, and mold and mildew on ceiling tiles created by moisture from leaks in the heating and air conditioning units. In addition, significant testimony was offered through various

witnesses concerning the claimant's exposure to bleach in one of the school bathrooms on November 20, 2003, which caused the claimant to have an immediate and significant reaction to the exposure. In fact, there is no genuine dispute that the claimant was exposed to an high concentration of bleach for a brief time on November 20, 2003, and that she complained about various physical problems, including respiratory problems thereafter. Nevertheless, the claimant attributed her problems to the alleged exposure to mold. Suffice it to say, that it would require sheer speculation and conjecture to attribute the claimant's injury to any specific exposure at her workplace. 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).

Evelyn Smith was called as a witness by the claimant. Ms. Smith has worked for the Osceola Middle School since the 1998-99 school year. At one time during her employment, Ms. Smith worked in the same office as the claimant for half a day and the other half of the day in the main school office. Ms. Smith recalled one occasion during the 2000 school year when the carpet in the claimant's office was extremely wet and had a bad odor which she described as similar to a sour mildew odor. Ms. Smith was unaware of what caused the carpet to become wet. In any event, after the carpet was dry, she did not recall observing any further odor. Ms. Smith also suffered from allergies and sinus infections before going to work for the

school district. The witness had an extremely poor memory. Her testimony was of little evidentiary value.

The claimant, Carol D. Golden, testified in her own behalf. The claimant began working for the Osceola School District in February, 2000. Initially, the claimant was hired as a computer lab director at the high school. In July, 2000, the claimant assumed the responsibilities of the junior high counselor and split her time between the high school and the junior high school. She stated that in 2001-02, she became the full-time counselor at the junior high. The claimant testified concerning a number of either work-related incidents or exposures which she maintained caused her to have various allergic reactions. However, with the exception of an admitted exposure to the smell of bleach on November 20, 2003, which will be discussed further below, the claimant's testimony concerning any alleged exposures to mold and other toxic exposures at the workplace which may have caused her symptoms were mere conclusions that are not supported by credible evidence. The claimant reported having an allergic reaction in July and August, 2003, prior to the beginning of the school year which she attributed to a number of repairs going on in the school. She related that all of the ceiling tiles on the hallways were replaced. In addition, the school's heating system which consisted of a boiler system and water pipes suspended from the ceiling and running down the middle of the halls were painted. The claimant also stated that floors in the school were stripped and a number of cleaning activities going on. The claimant maintained that she had an

allergic reaction and sinus problems that lasted several days during this time which she apparently attributed to one or more of these events. The claimant also testified that in March of 2002 or March 2003, a water heater located in the boiler room behind her office rusted out and flooded the office, and that she was not permitted to return to her office until the carpets were cleaned and dried. The claimant's recollection of the date the office flooded was inconsistent with the testimony of Evelyn Smith. However, again, there is no credible evidence that any of the aforementioned exposures caused any of the claimant's physical problems. The claimant next testified concerning an admitted exposure at the workplace on November 20, 2003. Prior to that day, the entire school had been cleaned in preparation for a state education department inspection of the school. The claimant's description of the incident and her physical problems thereafter are set out below:

Q Okay. Let's move on to November 20th, 2003. Just give us a brief background of what was going on during that day.

A That was the day of our mandated state compliance visit where the State Department came in. They did a visual walk-through inspection; plus, I had spent two weeks preparing a hundred documents that they were to inspect. It was approximately 10:30 we got the call. The team was to come over to do the walk-through inspection, which I was to conduct. I went into the teacher's bathroom, which is right next to my office, very small, and the – I guess in preparation for the visit they had really done some cleaning. There was so much bleach in there I almost passed out in the bathroom.

Q Can you describe the smell?

A It was over – my throat closed. It was stinging, burning.

Q Had you ever –

A Like I said, it was just – it just like hit.

Q Had you ever walked in that bathroom before and smelled that type of odor?

A No. In fact, the teachers and myself had often complained that our bathroom never got cleaned.

Q Okay. And then what happened after you –

A When I could get to the door and breathe, I had an immediate reaction. I had the facial flushing. My skin was red. I was sweating profusely, and I ran outside to get some air. I told Mr. McNeal that there couldn't be a germ alive in there as much bleach that was in there. I think some other teachers complained and he opened the end hallway doors.

Q Okay. Who is Mr. McNeal?

A He was my principal at the time, Mr. Howard McNeal.

Q Was he your immediate supervisor?

A Yes.

Q Okay. Did anyone else complain about the bleach?

A I believe so, because he did go down and open the end doors. I didn't request him to, but I think there was – I believe it was Ms. Givens that said something about. Really, I was wanting to go to the doctor, but we had the state people coming in, and I thought I would just get through that and then go home.

Q So what did you do?

A I toughed it out. I did the walk-through inspection, and also conducted a three hour interview and inspection with the State Department people.

Q And what time did you leave work that day?

A At approximately 4:00.

Q When you went home, what happened, or did you go home?

A Well, during the interview and inspection they thought I was very nervous because I was sweating so much. I was having a very bad reaction. I went home and took about 200 milligrams of Benadryl, and I was absent from school the next day, sick all weekend. The Monday following I went to – at lunch I went over to Dr. Cullom's office and got an antibiotic and some Zyrtec.

Q Okay. What about the week following that? Did you go back to work?

A It was Thanksgiving vacation, and I pretty much stayed in bed over vacation. By the time I was to go back to work, I mean, I was better.

Q Did you go back to work on Monday then after vacation?

A Monday after Thanksgiving vacation, yes. And the following day is the first ear infection, eye infection. That's when the infections started.

Q Okay. Tell us about that.

A I believe it was December the 2nd. We were off Thanksgiving. I went back in to work Monday. By Tuesday, it was my first time to have to see Dr. Cullom. I had an ear infection, an eye infection, I had visible swelling, and he gave me a steroid shot and some sample Zyrtec.

Q Why did you go see Dr. Cullom?

A I knew there was some sort of – I had a respiratory infection and sinus infection and, like I said, basically my ear.

Q Was he your family doctor?

A He's been my doctor 25 years, yes. (Tr.35-38)

The claimant also alleged an allergic reaction to a carbon monoxide leak at the school. The claimant first stated that the event occurred in 2001, at which time she began having chronic eye infections which she attributed to the carbon monoxide leak. Her attorney identified the date as January of 2004. However, a medical record from her family physician reflects similar complaints involving both

her eyes and ears on February 4, 2003. The claimant's testimony appeared to be self-contradicting and is inconsistent with her testimony on cross-examination below. (Tr.40-41)(Jt. Ex. A, p.3)

Despite all of the aforementioned, alleged exposures, the claimant ultimately concluded that her physical problems were related to exposure to mold. Apparently, on or about January 20, 2004, she first decided that she would request that her employer file a workers' compensation claim for an allergic reaction to mold. The claimant became upset when Lisa Park, in the administration office, told her that proving an exposure to mold claim would be very difficult. The claimant appeared incensed that she would be required to meet the burden of proving such a claim. The claimant received a claim form on January 20, 2004, and subsequently filed the claim on March 15, 2004, attributing the physical problems to either the specific exposure on November 20, 2003, or allergic reactions to mold and other chemical exposures. The claimant stated that she did a lot of research, yet it is apparent from her claim and the record as a whole that she is unsure as to which of the various exposures, if any, caused her symptoms. (Tr.50)(Cl. Ex. A, pp.11, 22)

On cross-examination, claimant stated that she was not claiming exposure to carbon monoxide as a compensable event. She further conceded that she had been experiencing seasonal allergy problems since 1991 while maintaining that the condition had only been chronic after November 20, 2003. On further cross-examination, the claimant admitted that she was required to get a prescription for Zyrtec on November 4, 2003, which pre-dated the date of the bleach exposure. On

further cross-examination, the claimant conceded that on November 19, 2003, the day before the State's inspection of the school, she went and obtained some prescription medication, Ambien, because she was anxious about the State inspection. The claimant also admitted that she had an outbreak of shingles prior to the immediate claim which was one of the symptoms she experienced after November 20, 2003. The claimant maintained that she did not smell the bleach in the bathroom upon entering the bathroom while maintaining that she remained in the bathroom two or three minutes, at which time she was apparently overcome by the inhalation of the bleach. The claimant also conceded that she had done some remodeling work in her own home at a time contemporaneous with her multiple symptoms which is when her doctor first suspected that exposure to mold might be the source of her physical problems. A series of medical testing revealed that the claimant was allergic to a number of allergens. The claimant admitted that she smoked cigarettes until recently. The claimant has pets. In addition, the medical evidence reflects that the claimant has a strong family history of upper respiratory allergic disease.

Tony Lambert was called as a witness by the claimant. Mr. Lambert works in the maintenance department on the junior high campus. He acknowledged removing a ceiling tile in February, 2004, which had been discolored by a water leak. In addition, he recalled being asked to clean and dry a carpet in the claimant's office on an unidentified date.

Joe Felton was called as a witness by the claimant. He testified concerning the replacement of ceiling tiles, as well as the spray painting of pipes in front of the school building, but none in the claimant's office.

Rose Wright, a witness called by the claimant, confirmed that the claimant appeared teary-eyed and red-eyed following her exposure to bleach on November 20, 2003.

Tom Taylor was called as a witness by the respondents. Mr. Taylor is employed by the Arkansas Department of Health and Human Service. Mr. Taylor is an environmental specialist. He stated that at the request of the employer, he performed an inspection of the school building concerning a complaint of possible mold. He stated that he and David Simpson, a heating and air inspector, did a walk-through of the claimant's office, as well as other portions of the school to inspect for mold, as well as to detect any carbon monoxide leaks. He stated that the inspection occurred on March 30, 2004. No visible detection was made. Mr. Taylor conceded that he did not conduct an air sample test for mold.

Jerry Jernigan, a witness called by the respondent, is a private heating and air contractor in Mississippi County. He stated that, as part of his duties, he performs the heating and air conditioning contract work for the respondent. Rather than conduct an exhaustive analysis of Mr. Jernigan's testimony, suffice it to say that he acknowledged observing mold on pipes and coils in the heating and air conditioning system at the school which was expected wherever condensation

occurs, inferring that mold is a common part of our everyday environment.

The testimony of Howard McNeal, Billy R. Daniels, and Milton Washington was of little evidentiary value. Part of their testimony concerned the claimant's absenteeism and ultimate transfer in her position. Again, retaliatory discharge was dismissed as an issue.

The claimant contends that she sustained a compensable injury and/or an occupational disease as the result of consistent exposure to mold and other toxic exposures at the workplace. Accordingly, it is necessary to examine the various types of injuries recognized under our workers' compensation laws.

Ark. Code Ann. §11-9-102(4)(A) (Repl. 2002) defines various injuries recognized under our Act. It is set out in its entirety below:

(i) An accidental injury causing internal or external physical harm to the body or accidental injury to prosthetic appliances, including eyeglasses, contact lenses, or hearing aids, arising out of and in the course of employment and which requires medical services or results in disability or death. An injury is "accidental" only if it is caused by a specific incident and is identifiable by time and place of occurrence;

(ii) An injury causing internal or external physical harm to the body and arising out of and in the course of employment if it is not caused by a specific incident or is not identifiable by time and place of occurrence, if the injury is:

(a) Caused by rapid repetitive motion. Carpal tunnel syndrome is specifically categorized as a compensable injury falling within this definition;

(b) A back or neck injury which is not caused by a specific incident or which is not identifiable by time and place of occurrence; or

(c) Hearing loss which is not caused by a specific incident or which is not identifiable by time and place of occurrence;

(iii) Mental illness as set out in §11-9-113;

(iv) Heart or cardiovascular injury, accident, or disease as set out in §11-9-114;

(v) A hernia as set out in §11-9-523; or

(vi) An adverse reaction experienced by any employee of the Department of Health and Human Services or any employee of a hospital licensed by the department related to vaccination with Vaccinia vaccines for smallpox, including the Dryvax vaccine, regardless of whether the adverse reaction is the result of voluntary action by the injured employee.

A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. §11-9-102(4)(D) (Repl. 2002). A claimant seeking workers' compensation benefits for a gradual onset injury must prove, by a preponderance of the evidence, that: (1) the injury arose out of and in the course of his or her employment; (2) the injury caused internal or external physical harm to the body that required medical services or resulted in disability or death; and (3) the injury was the major cause of the disability or need for treatment. Ark. Code Ann. §11-9-102(E)(ii) (Repl. 2002). In addition, medical opinions addressing compensability must be stated within a reasonable degree of medical certainty. *Crudup vs. Regal Ware, Inc.*, 341 Ark. 804, 20 S.W.3d 900 (2000).

From the foregoing definitions, the only potential injuries that the claimant can reasonably make a claim would be A.C.A. §11-9-102(4)(A)(i) and A.C.A. §11-9-102(4)(A)(iv) which is set out, in part, follows:

(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.

The above statutory provisions require that a claimant seeking workers'

compensation benefits for a pulmonary or respiratory injury or illness must show that the injury in relation to other factors contributing to the physical harm to the body was the major cause of the physical harm, which is also required for all gradual onset injuries; however, A.C.A. §11-9-102(4)(A)(ii) is not applicable to the immediate claim.

In the alternative, the claimant contends that she sustained an occupational disease as the result of consistent exposure to mold and other toxic exposures at the workplace. Occupational disease injuries are recognized in sub-chapter 6 of the Arkansas Workers' Compensation Act. By definition, occupational disease requires a causal connection between the occupation or type of work being performed and the development of a disease which relates to a specific occupation or trade. Clearly, the claimant suffered from a disease common to many individuals, allergies. Her condition pre-dated her employment with the Osceola School District. Portions of Ark. Code Ann. §11-9-601 are set out below:

(e)(1)(A) "Occupational disease", as used in this chapter, unless the context otherwise requires, means any disease that results in disability or death and arises out of and in the course of the occupation or employment of the employee or naturally follows or unavoidably results from an injury as that term is defined in this chapter.

(B) However, a causal connection between the occupation or employment and the occupational disease must be established by a preponderance of the evidence.

(3) No compensation shall be payable for any ordinary disease of lift to which the general public is exposed.

(g)(1) An employer shall not be liable for any compensation for an occupational disease unless:

(A) The disease is due to the nature of an employment in which the hazards of the disease actually exist and are characteristic thereof and peculiar to the trade, occupation, process, or employment and is actually incurred in his or her employment. This includes any disease due to or attributable to exposure to or contact with any radioactive material by an employee in the course of his or her employment. (Emphasis supplied)

A review of the medical evidence reflects that the claimant cannot meet her burden of proving the causal relationship between her physical problems and her employment.

The claimant has a strong family history of upper respiratory allergic disease. She acknowledged that she had been treated for seasonal allergies beginning in 1991 while maintaining that they did not become chronic until following the November 20, 2003, bleach incident at the school. Although the claimant's family physician's medical records are incomplete, it is apparent that the claimant had symptoms prior to her employment with the respondent herein for which she received as needed treatment by her family physician. Likewise, the claimant's medical records after her employment with the respondent are poorly developed. However, the claimant was ultimately examined and evaluated by Dr. David M. Lewis on January 26, 2004, by referral of her primary care physician, Dr. Reggie Cullom. Dr. Lewis is an otolaryngologist. His initial report is set out in its entirety states:

Carol is an adult female who has a strong family history of upper respiratory allergic disease. She has had some fairly significant exposures herself recently.

They bleached the entire school and she had difficulty while she was being exposed to that. She tends to have difficulty whenever she is exposed to a lot of mold. This winter she has had a lot of problems. This is to be expected since it has been fairly warm. Her main complaints today are her eyes are irritated and she is having epiphora or drainage that sometimes is yellow. She also complains of her right ear being uncomfortable at times and at times feels stopped up. Physical examination demonstrates a little bit of conjunctivitis; this may have an infectious component. She also has otitis externa on the right side. Her tympanic membranes are retracted but she has pharyngeal lymphoid hypertrophy. We are going to try Allegra D to see if it unstops her nose a little bit better and we will put her on Rhinocort Aqua to see if we can improve her eustachian tube function. She was given a prescriptions [sic] for Cortisporin otic suspension drops to help with the right external otitis but she was advised to blow-dry her ears before use and she will Tobradex ophthalmic suspension drops to help with her eye symptoms. She is to follow-up in the office in three weeks for recheck. Otherwise she is to continue to follow-up with Dr. Cullom for the balance of her care. (Jt. Ex. A, p.7)(Emphasis supplied)

First, I feel compelled to point out that the report set out above contains an inaccurate history of the claimant's problems. The evidentiary deposition of Dr. Lewis was taken February 22, 2006, and made a part of the record herein. In his deposition, Dr. Lewis confirms that the claimant informed him there was a potential mold problem and that the employer attempted to bleach the entire school in order to try to clear the mold problem. It was after her exposure to whatever this mold was in the bleach that the claimant began having difficulty. The history is confusing and inaccurate. (Jt. Ex. C, p.9)

Dr. Lewis was also questioned concerning whether the claimant's physical problems were the result of a specific exposure or whether they developed over time. In addition, he was asked to give an opinion within a reasonable degree of medical certainty as to the cause of the claimant's problems. A portion of his testimony follows:

Q I think kind of following along that line is there one circumstance or the other that is the one that occurred that is more prevalent? Is it the kind of gradual over time that's more prevalent –

A – Gradual over time is way more prevalent.

Q I want to make sure we're – are you giving or offering an opinion to a reasonable degree of medical certainty as to which of either of these Ms. Golden had?

A Well, the answer to my question is made on my experience with Ms. Golden alone and the history that she gave. That is that prior to this time she may have had occasional problems but from this moment in time on, she all of the sudden got worse. So based on her history, her history is one where she at least feels like from this point in time not that the allergy problem became much more significant than it was in the past.

Now, is there any way to prove that one way or the other. The only way to know that for sure would be to have tested her one year before, five years before, ten years before or had experience with her before to know how frequently she was having difficulty prior to that point. And from this point one, you know, how frequently was she having difficulty. If she was having, you know, one problem every five years prior to this point and now all of a sudden, she is cropping up with difficulty every six weeks, it would lead me to believe that probably her immune system is being triggered at this point in time and it is responding more aggressively than it was prior. The disease process is still the same. This is still a genetically determined disease process. And what switched her system on is the question.

Q Yeah, I mean, that's part of the nature of the dispute. I think when we really get down to it we get into, you know, what is more probable than not. I think part of what I'm hearing from you is whether there was not a way to get to that point in all of this.

A Be very, very difficult to try to prove one way or the other simply because you would have to have testing before and testing after to really have objective evidence to show one way or the other.

Q Is it fair to say that what is being described and I mean, you know, as I would suspect, I mean, your major purpose was to try to treat the patient. Most doctors I talked to aren't necessarily trying to figure out legal cause or whatever. They're just trying to assist the patient.

A No. My intent every visit with her is try to make her feel better so that she

doesn't have to come back.

Q Sure. But I guess with respect to the instance, with respect to the history that she gave you and with some of this other information that I've given you about her history; the smoking, the prior sinus problems, the prior problems with shingles, I guess, and I'm not trying to put words in your mouth, it almost seems to me like this is something is a possibility as opposed to a probability that imitated her problems as far as her work.

A I agree with that. (Jt. Ex. C, pp.21-23)

Dr. Lewis was asked to explain his June 5, 2005, report addressed to whom it may concern attributing the claimant's upper respiratory allergic disease to multiple inhalants that she was exposed to at work with mold probably contributing to the severity of her allergy problems which was introduced as "Joint Exhibit A, pp.48-50." When questioned further in his deposition, Dr. Lewis offered the following testimony:

Q Okay. And Doctor, let me see with respect to this. I've read over this note and letter that you wrote to whom it may concern. I think you were trying to address a number of things in that. What I'm trying to make or to understand is whether you were kind of recounting the history or trying to state an opinion as to the etiology of her problems. So I'm really trying to understand what your opinion exactly was. It's not because you were unclear. It's because it was a complicated case and I'm just trying to understand it better.

A Well, I'm going to cut to the chase then.

Q Okay.

A At the end of this narrative that was mainly intended to encapsulate everything that had occurred from the beginning when she started seeing me until the end. Beginning with the last paragraph on the second page my clinical impression is that she has significant upper respiratory allergic disease to multiple inhalants and that the exposure that she had at the work place with mold probably contributed to the severity of her allergy problem. Since upper respiratory allergic disease is based upon both exposure to environmental allergens and the genetic predisposition for

the development of this kind of process, it will be reasonable to conclude that she will have difficulty with this type of problem probably for the rest of her life. The exposure to things that she is allergic to will cause her to have increase in her systems and difficulty that you should avoid environments where she may be exposed that would cause her to have difficulty.

So my opinion is that it is possible that her exposure to mold and bleach in the work place contributed to her problem? Yes. Do I think it's the only contributing thing in her problem? No. I think genetics contribute to it. I think a prior history of allergy problems certainly contributes to it. I think it's an ongoing disease process. I think she's going to have this the rest of her life. I think it can be treated usually in most people fairly successfully.

Do I think her exposure in the work place was the only cause, uh, that lead her to this process? No.

Q And just to make sure on a few things that I haven't misinterpreted something in all of this. The type of problems that she had that's something that you obviously see patients every day. The work place versus non work place that have allergy type problems like this, correct?

A Correct. (Jt. Ex. C, pp.34-36)

Prior to the hearing, respondents submitted the claimant's deposition, as well as the medical records from prior treating physicians to Dr. Henry F. Simmons, specifically, to determine whether the claimant developed a toxicological disease related to her exposure to bleach. Rather than restate an exhaustive analysis of Dr. Simmons' four (4) page report, his conclusion is set out below:

In conclusion Ms. Golden does not have toxicological disease related to bleach. She does have an atopic disposition and non insulin dependent diabetes that both arise from her genetics. The bleach exposure as she described it would not have made a significant difference in either condition. The worsening of her upper airway symptoms cannot be separated from ongoing exposure to unrelated allergens, aggravation from her smoking habit and natural progression of her allergic disposition. Transient elevation in her blood sugar and depression of her adrenal glands would not persist, even if they had been clinically significant. (Jt. Ex. A, p.57)

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 her 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 her 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).

Dr. Lewis did not state that the claimant's injury was related to her work within a reasonable degree of medical certainty. Clearly, Dr. Simmons opined that there was no causal connection between the symptoms and claimant's work. The claim turns almost entirely upon the claimant's personal suspicions. No matter how sincere the claimant's belief that her problems are related to her employment, this does not satisfy her burden of proving her claim. The claimant had a strong family history of upper respiratory allergic disease. Her condition pre-existed her employment. She was a smoker. She was exposed to many irritants outside her

employment that aggravated her condition.

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that the claimant has simply failed to prove that she sustained a compensable injury within the meaning of our workers' compensation laws. Accordingly, the within claim is hereby respectfully denied and dismissed.

IT IS SO ORDERED.

DAVID GREENBAUM
Chief Administrative Law Judge