

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F603068

MARY K. GORE, EMPLOYEE	CLAIMANT
OSCEOLA SCHOOL DISTRICT 1, EMPLOYER	RESPONDENT
RISK MANAGEMENT RESOURCES, INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED NOVEMBER 22, 2006

Hearing before Chief Administrative Law Judge David Greenbaum on October 20, 2006, at Luxora, Mississippi County, Arkansas.

Claimant appeared *pro se*.

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

STATEMENT OF THE CASE

A hearing was conducted October 20, 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 August 30, 2006, 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. A copy of the Prehearing Order was introduced, without objection, as "Commission's Exhibit 1."

It was stipulated that the employment relationship existed between the parties at all relevant times, which continued through the present and that respondents had controverted the claim in its entirety. Although there was no claim

for indemnity benefits, it was further agreed that the claimant earned sufficient wages to entitle her to the maximum compensation rates, if applicable.

By agreement of the parties, the primary issue presented for determination concerned compensability. If overcome, claimant's entitlement to associated benefits must be addressed.

Claimant contended, in summary, that she sustained a pulmonary injury which arose out of and during the course of her employment with the Osceola School District during the school year 2005-2006, beginning on or about August 25, 2005; that respondents should be held responsible for all medical treatment related to the diagnosis and treatment of her injury, together with continued, reasonably necessary medical treatment.

The respondents contended that the claimant could not meet her burden of proving a compensable, job-related injury and, further, could not meet the requirements of Ark. Code Ann. §11-9-114. Respondents further stated that, while they did not interpret the claim as stating a claim for an occupational disease, if the claimant so contended, then respondents plead applicable defenses under Ark. Code Ann. §11-9-601, *et seq.* Alternatively, in the event claimant was able to prove a compensable injury, respondents requested a credit or offset for any benefits paid by claimant's health insurance pursuant to the provisions of Ark. Code Ann. §11-9-411.

The claimant has, at various times, been advised of her right to legal

representation; that an attorney could not charge her a fee for representing her in a workers' compensation claim without approval of this Commission; that fees were normally awarded only out of benefits obtained in her behalf, and that she would only be responsible for a portion of the fee if an attorney was successful in obtaining benefits for her. In addition, the claimant was advised that she had the burden of proving her claim; that she was only entitled to one hearing; and that, for any reason, if she was unsuccessful, she could not request a second hearing maintaining that the reason for the failure to prove the claim was lack of legal representation. The claimant elected to proceed in her own behalf.

In addition to the claimant, several witnesses were called as corroborating witnesses, specifically, Brenda Meadows, Becky Hoskinson, Loren Morgan, Douglas Caldwell, and Milton Washington. The record is composed solely of the transcript of the October 20, 2006, hearing containing numerous exhibits.

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 that she sustained an occupational disease within the meaning of Ark. Code Ann. §11-9-601 (Repl. 2002).
6. The claimant has failed to prove, by a preponderance of the evidence, that her pulmonary or respiratory problems were due to a work-related accident causing injury or illness which was the major cause of her physical problems and need for medical treatment.

DISCUSSION

Many of the relevant facts in this case are undisputed. The record reflects that the claimant has a long history of respiratory problems. The record reflects that the claimant has, over the years, developed severe allergy problems and that she is sensitive to multiple inhalants, many of which she was exposed to at the workplace. Clearly, a number of workplace exposures over the years temporarily aggravated and exacerbated the claimant's pulmonary problems. The claimant is an extremely nice and polite lady. She sincerely believes that all of her medical problems are causally related to workplace exposures; however, no matter how

sincere a claimant's belief that a medical problem is related to a compensable injury, such belief is not sufficient to meet the claimant's burden of proof. *Killingberger v. Big "D" Liquor*, AWCC #E408248, Full Workers' Compensation Commission Opinion filed August 29, 1995. Workers' compensation cases require that the claimant bear the burden of proving the compensability of her claim by a preponderance of the evidence. *Jordan v. Tyson Foods, Inc.*, 51 Ark. App. 100, 911 S.W.2d 593 (1995).

The claimant, Mary K. Gore, is fifty-two (52) years old. She has a bachelor of science degree. She has been a teacher of mathematics at the Osceola High School since August, 1990. The claimant attributed her physical problems and need for medical treatment beginning in October, 2005, to exposures to fumes from coal tar, as well as uncovered insulation from ceiling tiles which fell in the classrooms as the result of water leaks during the time the school roof was being repaired by the application of roofing tar. The claimant testified that the problems began during the start of the school year in August, 2005, and resulted from the continuous inhalation of coal tar, as well as exposure to insulation. The claimant candidly acknowledged having "recurring" pulmonary problems which she stated began during the fall of 1997 and which the claimant attributed to being sprayed by pepper mace which was the result of a specific work-related incident. No workers' compensation claim was filed for the 1997 incident. The claimant related that she was told by the school principal, Mr. Washington, that because she waited several

days to request that a claim be filed, it was too late to pursue her claim. She stated that the medical for the 1997 incident was paid by her health insurance policy and that she continued working. The claimant stated that following the 1997 incident, her symptoms improved. She denied experiencing any additional problems immediately prior to the August, 2005, claim except for normal, seasonal allergies. Following the exposure to the coal tar and ceiling tile insulation, the claimant filed the immediate claim with the school system. The claimant verbally reported her symptoms to various supervisory personnel, including Mr. Douglas Caldwell, Mr. Loren Morgan, as well as submitting a written claim to Sarah White, the school secretary. However, the claimant apparently did not seek any medical treatment until on or about October 5, 2005, when she returned to her primary care physician, Dr. S. R. Cullom. After seeing Dr. Cullom, the claimant formally filed a claim for workers' compensation benefits, at which time the adjustor for the third-party administrator controverted the claim. Thereafter, the claimant filed a claim under her health insurance policy. The claimant's treatment beginning October, 2005, through the present has been paid by health insurance except for co-payments. In addition, the claimant has continued working except for brief periods that she was taken off work during the diagnosis and treatment of her condition during which the claimant continued to receive full pay from the school's Sick Bank. (Tr.24-35)

On cross-examination, the claimant acknowledged having respiratory problems which had been diagnosed as allergy problems before 1990. She admitted

that various smells triggered her allergy problems. In addition, the record reflects that the claimant was hospitalized for problems with cough and laryngitis during July, 2005, before the school year began, at which time her primary care physician, Dr. Cullom, referred her to a ENT for evaluation. Suffice it to say that the record reflects that the claimant has a long history of respiratory problems and has been examined by numerous physicians as will be reflected further in the medical below.

Brenda Meadows and Becky Hoskinson were called as corroborating witnesses by the claimant. Both confirmed that the claimant complained about the smell of coal tar in the classrooms, as well as the conditions created by mold and insulation from falling ceiling tiles.

In addition, Mr. Loren Morgan, the Dean of Students, and Douglas Caldwell, the school's principal, confirmed that the claimant made complaints relating to the smell of tar fumes during the beginning of the school year 2005. However, both indicated that the claimant frequently complained about various odors that caused her breathing problems, including the smell of strong perfumes, chalk dust, and other irritants. Mr. Caldwell stated that because of the claimant's pre-existing breathing problems, he attempted to make necessary accommodations to minimize the claimant's exposure to the irritants.

Milton Washington was also called as a witness by the claimant. Mr. Washington was the superintendent of the Osceola schools at the time of the within hearing. Apparently, Mr. Washington was the principal of the high school during the

time that the claimant was sprayed with the pepper mace during 1997. The only probative value of Mr. Washington's testimony concerned possible deficiencies in the employer's reporting of work-related injuries. As previously pointed out, the claimant testified that Mr. Washington advised her that she did not timely fill out an incident report following the pepper mace incident and that it was too late to file her claim. In response, Mr. Washington stated that he had already moved from the position of principal to administration in 1997, indicating he was not at the school. In addition, he maintained that the school would never turn down anyone who wanted to file a workers' compensation claim, "unless they were outside of the window," which he explained should be within forty-eight (48) hours of an incident. It appears that Mr. Washington's misunderstanding of the employer's reporting requirements is misplaced. (Tr.80-82)

I feel compelled to point out that the 1997 work-related incident was not the subject of the within claim. Rather, the claimant contends that she sustained a pulmonary injury which arose out and during the course of her employment with the Osceola School District during the school year beginning in August, 2005, specifically, as the result of constant toxic exposures at the workplace, more specifically, exposures to coal tar and/or insulation from ceiling tiles. 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), more specifically, a lung injury under A.C.A. §11-9-114 which states:

(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.

The claimant cannot satisfy the statutory requirements because she cannot prove that her pulmonary injury, if indeed the claimant has a pulmonary injury, was caused by either a work-related incident or accident. Rather, the medical evidence reflects that the claimant has a long history of pulmonary problems. The only

specific incident that the claimant can identify relates to being sprayed by pepper mace on or about 1997; however, again, that incident is not the subject of the immediate claim.

A review of the medical evidence, as well as the medical opinion of record is also instructive.

The record reflects that the claimant was examined and evaluated by Dr. Patrick Savage of the NEA Pulmonary Clinic on October 27, 1998. In the history obtained by Dr. Savage, the claimant was seen for a continuous cough, as well as mild, increased shortness of breath, of recent origin. The history further reflects that the claimant had been evaluated twelve (12) to thirteen (13) years previously for allergies and was on allergy shots for four (4) to five (5) years at that time. Clearly, based on the history, claimant's allergies pre-dated her employment with the respondent herein. The history also indicated that the claimant reported that she was allergic to "almost everything." The claimant reported triggers for her cough to include exposures to crops and crop dust, deep breathing, exertion, and strong perfumes or fragrances. Dr. Savage subsequently diagnosed the claimant with cough variant asthma. (Resp. Ex. A, pp.1, 6)

Interestingly, the claimant was subsequently seen by Dr. William S. Hubbard at the NEA Clinic on August 8, 2000, at which point the claimant had already been examined and treated by numerous physicians, including Dr. Savage, Dr. Hudson, Dr. Cullom, as well as Dr. Snodgrass, an allergist in West Memphis. During the

August 8, 2000, visit, the claimant gave a detailed history of various long-standing problems which the claimant, for the first time apparently related as getting much worse in 1998 following the incident at school involving the pepper spray which the claimant related as the “early onset of the additional problems.” Dr. Hubbard diagnosed allergic angioneurotic edema and vocal cord swelling. He suggested that the claimant be referred to an allergist again. (Resp. Ex. A, pp.8-10)

The claimant was also seen by Dr. Mark D. Sifford, a specialist in pulmonary medicine at the Clopton Clinic in Jonesboro, Arkansas. Dr. Sifford diagnosed the claimant’s problem as allergic based bronchitis and maybe post inflammatory component such as noxious stimulant exposure, specifically, pepper gas and caused more reactive airways typical since that time by history. The claimant was treated with medications. (Resp. Ex. A, pp.13-14)

The claimant continued to receive as needed, follow-up treatment for bronchitis by Dr. Cullom. Dr. Cullom next referred the claimant to Dr. David M. Lewis, an otolaryngologist in Jonesboro, Arkansas. Dr. Lewis diagnosed restrictive airway disease, upper respiratory allergic problems, and significant gastroesophageal reflux. Again, the claimant was treated with medications. (Resp. Ex. A, p.20)

It must be noted that the claimant continued to see Dr. Cullom on a regular basis. In fact, the claimant saw Dr. Cullom with continued complaints related to exposure to irritants such as perfume. The claimant saw Dr. Cullom at least six (6)

times between January, 2004, and July, 2005. All of the claimant's multiple complaints pre-dated her exposure to coal tar and/or ceiling tile insulation in August, 2005. The claimant was next examined by Dr. Cullom on October 5, 2005, at which time she was diagnosed with sinusitis and chronic obstructive pulmonary disease with bronchitis. (Resp. Ex. A, p.27)

As previously pointed out, the claimant continued working following her exposures to coal tar in August, 2005. Dr. Cullom subsequently admitted the claimant to the hospital on February 28, 2006. A portion of Dr. Cullom's history noting that the claimant did not have any lung problems at all until approximately 1997, when sprayed with mace in the school, while inconsistent with the record as a whole, in no way attributes the claimant's physical problems to the claim filed herein, attributing her problems to exposures to coal tar. Dr. Cullom eventually referred the claimant to Dr. Richard S. Irwin, Professor of Medicine with the Division of Pulmonary, Allergy, and Critical Care Medicine at the University of Massachusetts Medical School. Apparently, the claimant was referred to Dr. Irwin to diagnose the cause of claimant's chronic cough. In his June 29, 2006, report, Dr. Irwin opined that while he was not entirely clear what the cause of the chronic cough was, his belief was that it was due to one or more of the following conditions that may be simultaneously contributing: (1) gastroesophageal reflux disease; (2) upper airway cough syndrome secondary to chronic rhinitis; (3) suppurative airway disease; and/or (4) ACE inhibitor induced cough. He stated that because a methacholine

challenge was negative, he did not believe that asthma was participating in her cough at that time. (Resp. Ex. A, p.42)

In a report dated July 6, 2006, Dr. Cullom writes:

Mary K. Gore is a patient of mine. She has been previously diagnosed as having hypogammaglobulinemia and an inability to fight any viral or any forms of infections. Certainly her work situation did not create the hypogammaglobulinemia, however the breathing of coal and tar from the roofing and strong odor irritated the airway. The fiberglass insulation in the attic area, that was in the open for 3 to 4 months. The mold and dust created by that, as well as the water drippings that flooded the room on several occasions has created a 2% mold problem. This has exposed her to aggravating fumes, mold and mildew, which is beyond what she should have normally faced.

With her underlying health problems this has exacerbated a continued many Upper Respiratory tract infections. Mrs. Gore is now in the process of going to Boston, MA to Dr. Irvin [sic], a Pulmonologist for help with Pulmonary Disease. Certainly the work place has not helped her problems, as it has exacerbated it. Please review her chart. If you have any questions, please contact my office. (Resp. Ex. A, p.44)

Contemporaneous with the aforementioned report from Dr. Cullom, Dr. Richard Irwin completed laboratory studies following the claimant's visit at the end of June, 2006. The laboratory studies included quantitative cultures which did reveal the presence of cryptococcus neoformans which confirmed that the claimant was hypogammaglobulinemic. In a follow-up report, he recommended treatment for cryptococcus respiratory infection, as well as recommending that the claimant see an Immunologist or Infectious Disease specialist to determine whether or not the claimant needed intravenous therapy. Dr. Irwin did not address the cause of the claimant's respiratory infection. (Resp. Ex. A, pp.47-48)

Respondents then requested a medical opinion to address the cause of the

claimant's pulmonary and respiratory problems. The medical records of Dr. Richard Irwin, Jeffrey O. Cohen, S. R. Cullom, Mark Sifford, William Hubbard, and Patrick Savage, totaling fifty (50) pages, were submitted to Dr. Michael D. Lack with Occupational Health Partners in Jonesboro, Arkansas. The reports included the diagnostic studies as well as the complete history and physical examination performed by Dr. Irwin. Dr. Lack's October 9, 2006, opinion is set out, in part, below:

Ms. Gore has always had normal spirometry. With a normal methacholine challenge she clearly does not have asthma or RAS. I believe that the association of the various triggers with her cough is recall bias. Recall bias occurs when a person is asked about their risk factors of behaviors after they are already diagnosed with a disease. It is possible that they may recall their exposures differently than people who do not have the disease.

In my opinion, Ms. Gore's chronic cough is not related to any exposure suffered at her work place, coal tar, fiberglass, or mold.

The above statements have been made with a reasonable degree of medical probability. The opinions rendered in this case are mine alone and are given totally independently from the requesting agents. These opinions do not constitute per se a recommendation for specific claims or administrative functions to be made or enforced.

This evaluation is based upon information obtained from the review of the prior medical records available to me, with the assumption that this material is true and correct. If additional information is provided to me in the future, reconsideration and additional reports may be requested. Such information may or may not change the opinions in this report. (Resp. Ex. A, p.51)

A final medical report was issued by Dr. Cullom on October 17, 2006.

Although the report was not submitted in compliance with my Prehearing Order, it was received over respondents' objection, subject to respondents' right of cross-

examination. Following the hearing, respondents stated that without waiving its objections to Dr. Cullom's report, it elected not to conduct the deposition. The report is inconsistent with the earlier report by Dr. Cullom addressing the causal connection between the claimant's health problems and her employment. The report, addressed to whom it may concern, is set out, in its entirety, below:

Recently, I wrote a letter stating that Mary Gore's health problems were work related. In that letter I said her immune system probably could not be blamed on those working conditions. After careful reconsideration any many hours of research, I can no longer make that statement.

Attached you will find one of the many articles I have read concerning chemical injury and/or the effects of mace/pepper spray and coal tar inhalation. The last paragraph on page 14 of this article **Defining Chemical Injury**, very clearly states that IgG subclasses may be low and should be tested after chemical exposure. This is the case with Mrs. Gore.

Looking at many research articles, I have found that Mrs. Gore's health problems, including the hypogammaglobulinemia, lungs, sinus, larynx and eyes, can all be traced to her chemical exposures at the work place. Her symptoms are classic research symptoms. It is uncanny how much her case parallels those of the research articles, especially the one I have attached.

I am now stating that I am convinced Mrs. Gore's health problems stem from the chemical exposure of mace/pepper spray and coal tar fumes. Had the incident with the mace/pepper spray happened just a year or so later, I would not have to write this letter for the law would automatically have taken care of this. The coal tar fumes are hazardous to any and all who endure them. It had a more adverse effect on Mrs. Gore; as the research article states on the bottom of page 4, chemically injured sometimes become more chemically sensitive.

Please reconsider your stance on this issue. I firmly believe Mrs. Gore's health problems are a direct result of the working conditions. (Cl. Ex. C)

I did not find the aforementioned report from Dr. Cullom to be persuasive.

It is simply inconsistent with the other medical opinion of record and does not

address the legal requirements of our workers' compensation laws. Further, the claimant's symptoms, and how they parallel research articles does not satisfy the requirement that medical opinions be stated within a reasonable degree of medical certainty. Further, Dr. Cullom states that the claimant's health problems stem from the chemical exposure of mace/pepper spray and coal tar fumes. As previously noted, the pepper spray incident, which occurred in 1997, is not the subject of the immediate claim. Rather, the claimant has, at all times, contended that she sustained a pulmonary injury arising out of and during the course of her employment during the school year 2005-06. In conclusion, the claimant simply cannot prove that she sustained a pulmonary or respiratory accident, and that the accident was the major cause of her physical harm as required by Ark. Code Ann. §11-9-114.

Although the claimant did not make a claim for an occupational disease, respondents did plead the applicable defenses under Ark. Code Ann. §11-9-601, *et seq.* Accordingly, a review of that statute is warranted. 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. Various exposures simply aggravated or accelerated the pre-existing condition. 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 life 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)

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 v. Faulkner Radio Service*, 220 Ark. 368, 247 S.W.2d 964 (1952); *Farmer v. 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 v. 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 the 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 v. Mr. C.Cavanaugh's*, 298 Ark. 363, 768 S.W.2d 521 (1989); *Fowler v. McHenry*, 22 Ark. App. 196, 737 S.W.2d 663 (1987).

Although I am persuaded that the claimant's exposure to coal tar temporarily aggravated her pre-existing condition, she has failed to prove that the exposure caused an injury or that the exposure was the major cause of any physical harm. As repeatedly stated, the accident reported as occurring when the claimant was sprayed with pepper mace in 1997 was not the subject of this claim. The claimant was exposed to many irritants, both inside and outside her employment, that aggravated her condition. The claimant's primary symptom and complaint concerned a persistent and severe cough. As previously pointed out, the claimant was seen by her primary treating physician, Dr. Cullom, on July 5, 2005, just one month prior to her exposure to coal tar with similar complaints to those voiced after the exposure. The claimant has been evaluated and treated by numerous physicians. The cause of claimant's problems are unclear, at best. To attribute the claimant's injury to a work-related accident would require sheer speculation and conjecture. Conjecture and speculation, however plausible, cannot be permitted to supply the place of proof. *Dena Construction Company v. Hearndon*, 264 Ark. 791, 575 S.W.2d 155 (1979); *Arkansas Methodist Hospital v. 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 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

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