

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM F501070

**EMMA JEAN WEBB,
EMPLOYEE**

CLAIMANT

**MANPOWER, INC.,
EMPLOYER**

RESPONDENT

**AMERICAN CASUALTY CO.
OF READING, PENNSYLVANIA,
INSURANCE CARRIER**

RESPONDENT

OPINION FILED FEBRUARY 1, 2006,

Pursuant to a hearing conducted November 16, 2005, before Administrative Law Judge Richard B. Calaway in Little Rock, Pulaski County, Arkansas, with

The claimant, proceeding pro se, and

Mr. Bill H. Walmsley, Attorney at Law, Batesville, Arkansas, appearing for the respondents.

STATEMENT OF THE CASE

This was a hearing to consider compensability of several physical problems which the claimant attributes to her work on the premises of Timex Corporation, pursuant to her job assignment by her employer, Manpower, Inc., a temporary employment agency.

The claimant contended that as a result of this employment assignment, by the month of February, 2004, she had contracted diabetes, heart problems, carpal tunnel syndrome, dizziness, nosebleeds, dry nose, dry throat, coughing, and light headiness due primarily to possible exposure to asbestos, anthrax, or chemicals. She further contended that wearing a mask on or about April 13, 2004, caused her heart to stop. She requested benefits, including payment of her medial expenses and temporary total disability benefits from April 14, 2004, until a date to be determined. Other possible issues were reserved.

The respondents denied the claim in its entirety, contending that:

1. The claimant did not sustain a compensable injury on April 13, 2004;
2. A compensable injury cannot be established by medical evidence, supported by objective findings;
3. The claimant has alleged an injury by gradual onset and is required to satisfy the burden of proof imposed by the Act for gradual onset injuries;
4. The evidence is not sufficient to satisfy the requirements of Ark. Code Ann. §11-9-114 concerning heart or cardiovascular injury, accident, or disease.

Before proceeding with the hearing, the claimant was again cautioned, as she had been during the prehearing conference, that, although she has a right to proceed without an attorney, she should consider retaining an attorney to represent her due to the complexity of her case and that she has the burden of proving her case.

Based upon the record as a whole, and without giving the benefit of the doubt to any party, as required by the Act, the following findings of fact and conclusions of law are hereby made:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of the parties and subject matter of this claim.
2. Pursuant to the stipulations of the parties and the record, the employment relationship existed at all pertinent times, including April 13, 2004, and the claimant's average weekly wage was \$311.07.

3. The preponderance of the evidence fails to show that the claimant suffered a compensable injury, condition, or disease, arising out of and in the course of her employment.
4. A compensable injury has not been established by medical evidence, supported by objective findings, within the meaning of Ark. Code Ann. §11-9-102(4)(D).
5. The preponderance of the evidence fails to show that the claimant's diabetic condition is causally related to her employment.
6. The preponderance of the evidence fails to show that the claimant has sustained a compensable heart injury, illness, or condition within the meaning of Ark. Code Ann. §11-9-114.

DISCUSSION

According to the claimant's testimony, she began working for Manpower, Inc., approximately in July, 2003, and was assigned to Timex Corporation. She believes that her work activity and the work environment is responsible for various physical ailments she may have contracted. She gave the following description of her experience at Timex.

First, while working on breaking down boxes in the bay, after all the contents had been removed and the boxes were to be destroyed, she had a coughing spell that caused her to gasp for breath.

She was then relocated into the distribution department but continued to have problems with coughing. In the distribution department, she packed watches into boxes with a thin paper. She stated that the paper would have a lot of dust and that the boxes also had a lot of dust. She also explained that the distribution department contained trash, boxes, and dust, and she began coughing

and gasping for her breath and also noticed that when she blew her nose, there would be blood there. She stated that her nose and throat began to dry out and she also experienced light headiness at that time. She said that this was due to possible asbestos in the fiber or in the paper in the boxes and, also, that men would be working eight to ten feet above her, sweeping trash and the contents of boxes down to the lower level where she was working.

She further stated that when she went to the emergency room in 2004 she found that she had diabetes and the only thing she could think of was that it was caused by work because she had never had it before. She specifically attributes the development of diabetes to stress that had resulted from the different nosebleeds and dizziness and all of her symptoms which, she believed, caused her blood sugar to go out of control.

She further testified that in the service department she worked sorting watches and putting them on the shelves in alphabetical or numerical order. This required her to take down heavy boxes of watches and she strained her neck and her arm. She stated that she injured her wrist while working in Linda Evans' department where she put in little pins to connect the bands to the watches. She stated that after she injured her wrist, for a year, she could not pick up an empty shoe box because of the injury. She stated that the supervisor put her to another job where she would inspect or do something so that she would not be in the same department as before. She said that she has not received medical care for carpal tunnel syndrome, but that she did receive a wrap from her supervisor to put on her wrist.

She also believed that she has heart problems as the result of wearing a mask at the employment. This occurred while she was working in distribution doing several jobs, including packing and material handler, which meant that she would take work to other people, and work

taping boxes. She stated that this was dusty work and the employer sent her a mask to wear because of the dust.

On April 13, 2004, she wore the mask all day because it was dusty and at the end of the day when she took the mask off at about 3:30 there was blood again when she blew her nose and she got so dizzy she almost fell over. Then, all of a sudden, she took a breath, and her heart stopped. She stated that she looked around and everyone had gone to clock out and she began to beat her chest and called on God for help. Finally, she started to breath again and slowly got her things together. She then clocked out and walked several blocks so she could catch the bus. She stated that she met Margaret and told her that she had another coughing spell and this time it was her heart. She testified that she caught the bus from work which took her downtown where she changed buses and then took another bus to her neighborhood. She then walked about five blocks from the bus stop to her home, arriving at about 5:30 p.m., the usual time. She stated that she did not receive attention for her heart problems until May 2, 2004, and that this examination also revealed her diabetic condition.

She testified that on April 15 she told Jodie Huffmaster about her heart problem and that she did not think she could go back to that department, but that Jodie Huffmaster did not send her to the doctor and she did not think to ask about going to the doctor. On cross-examination, she also explained that she was worried about anthrax after seeing the news about anthrax being sent through the mail in Washington, D.C. She said that she thought anthrax might also be shipped into the Timex Plant and that she was not the only person with that opinion. She agreed that she was concerned there might be anthrax there because she was getting mail in. However, she testified that she did not know if there actually was any anthrax or asbestos at the Timex Plant while she was working there. She also testified that by October, 2004, she was considering work at night in a

security job and that she did not want to return to Timex because Jodie Huffmaster had said that nothing had been done about the conditions and, consequently, the claimant was afraid for her life.

She also testified that when she first wore the mask she started to suffer symptoms of pain in her face and head like having a stroke and that previously, in 1999, she had had a stroke and had been exposed to carbon monoxide and that it was possible some chemical in the mask had caused these things again and that she was probably allergic to what was in the mask. She stated that when she got home from wearing the mask all day at work, that's when the pain of a stroke appeared and, the next thing, wearing the mask all day caused her heart to stop. She stated that not having enough oxygen getting to her brain had left her thinking off and that now her heartbeat was irregular and her heart flutters and tries to stop when she lies down at night. She believes that her physical problems are related to her work and the working conditions at Timex and should be the responsibility of her employer.

Jodie Huffmaster testified on behalf of the respondents that after April 14, 2004, the claimant did not come to work and she called the claimant and was informed that she could not go to work because she was ill with sinus trouble but without claiming her illness was related to work. She stated that she did not know the claimant was contending that she had work-related injuries until her unemployment hearing, months after April, 2004.

It is well established that the claimant has the burden of proving entitlement to benefits, generally by a preponderance of the evidence and without the benefit of any presumption of compensability or entitlement to benefits.

Under prior law, it was the duty of the Commission to draw every legitimate inference possible in favor of the claimant, and to give the claimant the benefit of the doubt in making factual

determinations. However, current law requires that evidence as to meeting the burden of proof be weighed impartially and without giving the benefit of the doubt to any party, including the claimant. Act 10 of 1986, §10(2nd Ex. Sess.), Ark. Code Ann. §11-9-704(c)(4), effective July 1, 1986; Fowler v. McHenry, 22 Ark. App. 196 (1987). Even under prior law, when the claimant was entitled to the benefit of the doubt, conjecture and speculation, however plausible, were not permitted to supply the place of proof. Dena Construction Co. v. Herndon, 264 Ark. 791 (1979).

Here, a significant portion of the claimant's case relies on speculation and conjecture, where objective medical evidence was required. Indeed, where the statute generally requires proof of the existence of a compensable injury by medical evidence, supported by objective findings, the record is wholly deficient. For example, the claimant admits that she has not sought medical care for carpal tunnel syndrome and, consequently, there is no objective medical evidence showing the existence of that condition. Indeed, there is no objective medical evidence of any injury or condition that the claimant has described. A note from the Baptist Medical Center Emergency Department in Little Rock indicates that the claimant was diagnosed with palpitation and diabetes out of control but fails to include any objective basis for either diagnosis and fails to attribute either condition to the claimant's employment.

As to the heart or lung injury or illness, the Act sets forth exacting requirements of proof. Ark. Code Ann. §11-9-114 provides that such conditions are compensable only if, in relation to other factors contributing to them, an accident is the major cause of the physical harm. That section also provides that such a condition is not compensable unless it is shown that the exertion of work necessary to precipitate disability was extraordinary and unusual in comparison to the employee's usual work or that some unusual and unpredicted incident occurred which is found to have been the

major cause of the physical harm. It specifically states that stress shall not be considered in determining if the burden of proof has been met. Here, there is no proof of extraordinary or unusual exertion or the existence of some unusual and unpredicted incident which was the major cause of the claimant's heart condition. Similarly, there is no proof that an accident at work was the major cause of the claimant's heart problem. Thus, the proof in this record does not meet the requirements of Ark. Code Ann. §11-9-114.

Moreover, there is no proof of asbestos or anthrax at the work site.

The claimant's case is primarily based upon her suspicion that her work is the cause of her physical ailments since she became aware of her problems during the period of this employment. However, this mere coincidence in time between the symptoms and her employment is not sufficient proof that employment was the cause of her symptoms for purposes of the Act.

For the foregoing reasons, this request for benefits should be, and it is hereby, respectfully, denied and dismissed.

IT IS SO ORDERED.

RICHARD B. CALAWAY
Administrative Law Judge