

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F510658

TIMOTHY BUNCIK	CLAIMANT
AMERICAN STANDARD, INC.	RESPONDENT
ST. PAUL TRAVELERS INSURANCE CARRIER	RESPONDENT

OPINION FILED MARCH 16, 2007

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON in Fort Smith, Sebastian County, Arkansas.

Claimant appeared pro se.

Respondent represented by MICHAEL MAYTON, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on January 18, 2007, in Fort Smith, Arkansas.

A pre-hearing conference was held in this claim, and as a result a pre-hearing order was entered in the claim on June 6, 2006. This pre-hearing order set forth the stipulations offered by the parties, the issues to litigate and the contentions thereto.

The following stipulations were submitted by the parties and are hereby accepted:

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.

2. On all pertinent dates, the relationship of employee-employer-carrier existed between the parties.

3. The claimant is entitled to a compensation rate of \$385.00 for temporary total disability and \$289.00 for permanent partial disability.

By agreement of the parties the issues to litigate are limited to the following:

1. Compensability of the claimant's nerve disorder.
2. Related medical.
3. Temporary total disability from March 28, 2004, to a date to be determined.

In regard to the foregoing issues the claimant contends that his injury started on May 18, 1997, due to long term exposure. Disabling health affects peaked from 2001 to 2004. Was seen by doctor after doctor and was finally diagnosed on February 28, 2004, with sensory poly neuropathy in the upper and lower extremities. I was not aware of the chemical exposure health damage until the final diagnosis was found, then we found the cause. When we found out what the damage was and the cause, Air Systems and Travelers Indemnity was notified.

In regard to the foregoing issues the respondents contend that the claimant did not sustain a compensable injury while employed by the respondent employer as a result of chemical exposure. This claim has been denied and controverted in its entirety. The claimant is not entitled to any benefits. This claim is controlled by Ark. Code Ann. §11-9-114 and the burden of proof required in this statute. The claimant has alleged exposure to chemicals that caused his alleged condition from 1997 through 2001. As a result, this claim is barred by the statute of limitations. The respondents reserve the right to have an independent medical examination by Dr. Peter white in Little Rock. The claimant's

employment ended on March 28, 2004. The claimant did not file a workers' compensation claim until September 20, 2005, after he had been terminated, filed an EEOC claim and filed a wrongful discharge claim. There are no medical records to support the claimant's allegations of a compensable chemically induced injury. The claimant has submitted no objective medical findings sufficient to support his allegations of a compensable injury. In the alternative, if it is determined the claimant sustained a compensable injury, the respondents had no knowledge of an alleged compensable injury until September 20, 2005, and are not responsible for any benefits until the date they had notice of the alleged claim. In the alternative, if it is determined the claimant sustained a compensable injury, the respondents hereby request a setoff for all benefits paid by the claimant's group health carrier, all unemployment benefits received by the claimant and any short term disability benefits received by the claimant.

The documentary evidence submitted in this matter consists of the Commission's pre-hearing order marked Commission's Exhibit No. 1. The claimant submitted medical information marked Claimant's Exhibit No. 1 and non medical information marked Claimant's Exhibit No. 2. The respondents submitted medical information marked Respondents' Exhibit No. 1. The respondents objected to the claimant's non medical information, after discussion, this evidence was admitted.

## DISCUSSION

The claimant testified that he started working for the respondent in 1997 as an assembler. The claimant explained that the respondent built large air conditioning and heating systems, some as big as a house. The claimant testified that the respondent furnished a cleaner called DoALL which contained Toluene and Butoxyethanol. The claimant testified that he used this DoALL product in cleaning the machines in areas which were closed up and the ventilation was very poor. The claimant stated that he worked with this product for approximately five years. The claimant testified that he was surprised when he began to develop symptoms and that these symptoms actually peaked from 2002 up to 2004. The claimant testified that he went to several doctors but eventually was referred by friends to Dr. Wendell Ross. The claimant testified that Dr. Ross ran several tests to try and figure out what was wrong with him because he was a very healthy man when he first began working for the respondent. The claimant testified that Dr. Ross indicated that all the tests were negative, therefore, it was his opinion that they needed to look into neurological problems. The claimant testified that Dr. Ross referred him to Dr. William Griggs. The claimant testified that he underwent a nerve conduction test and it was found that he had a severe case of sensory motor polyneuropathy of unknown etiology.

The claimant testified that he began stumbling and falling and he told his production manager at work that he needed to see a doctor which they were ok with for a while. The claimant testified

that then the respondents' attitude toward him changed and he felt like they were trying to get rid of him. The claimant testified that his supervisor, Steve Tate, was surprised to learn of his polyneuropathy and when Mr. Tate learned all the medications that the claimant was having to take he was not pleased. The claimant testified that Dr. Ross prescribed Neurotin, Doxepin, Methocarbamol, and Amitriptyline for him. The claimant testified that it was his understanding that these various drugs were prescribed to repair his nervous system. The claimant testified that he last worked for the respondent on March 28, 2004.

On cross examination, the claimant agreed that when he began working for the respondent it was what they called the old plant and that in 2001 they moved into a new facility which the claimant agreed was a state of the art plant. The claimant testified that he continued to work for the respondent approximately three or four years after they moved into the new plant. The claimant agreed that it was in 1998 when he first began having dizzy spells and that his legs started giving him some problems but he was not sure what it was all about. The claimant testified that he was relating these problems back to his inhalation of vapor. The claimant testified that initially his medical bills were paid through his group policy and after his termination and his group health ran out he then began treating at the Veterans Hospital. The claimant testified that after his job ended on March 28, 2004, he applied for and began receiving unemployment benefits and drew these benefits for about a year. The claimant agreed that in order to

draw unemployment benefits he had to sign that he was willing and capable of working and he had to go out on job interviews. The claimant agreed that he did not relate his problems to his work with the respondent until sometime after his employment ended in 2004 or maybe in 2005. The claimant agreed that the respondent quit using the product DoALL at the beginning of 2001 and further agreed that the last time he would have been exposed to this product was in 2001. The claimant testified that when they moved to the new facility the ventilation and everything was very good and high tech. The claimant testified that at the new facility they used a new cleaning agent called Prosobee which did not contain toxic chemicals. The claimant testified that he had no problems using this new product. The claimant testified that his use of the DoALL product was basically from 1997 to 2000. The claimant admitted that even during the year of 2000 he was not around the product DoALL that much. The claimant agreed that during his deposition they narrowed down his use of DoALL and his exposure to that product from 1997 to 1999 because during the year 2000 he used the product very little and in 2001 none at all. The claimant testified that after his work ended for the respondent, he filed a workers' compensation claim. The claimant agreed that the AR-C form which he filed with the Commission was dated September 20, 2005, and that the Commission received it on October 6, 2005. The claimant agreed that he first notified the respondents that he was filing a workers' compensation claim relating his problems to

the use of the DoALL when he filled his AR-C in late September or early October 2005.

Valerie Michelle Buncik testified on behalf of her husband. Mrs. Buncik testified that she worked for the respondent also and used the DoALL product from 1997 to 2000. Mrs. Buncik testified that at the old plant the ventilation was not good. Mrs. Buncik testified that as a lead technician she did not have a lot of exposure to the product DoALL because she had the other crew members work with the product due to the fact that the use of DoALL made her vomit. Mrs. Buncik was asked if the DoALL product had an affect on other workers and she responded, "Yes, it did."

At the end of testimony the respondents restated their contentions as to their statute of limitations defenses as well as the claimant's inability to meet his burden of proof in proving a compensable injury. The claimant then made a closing statement as well.

The medical records set forth that the claimant began being seen for complaints of his left knee on December 12, 2002. The claimant reported swelling and inflammation as well as shooting pains from his left knee to the bottom of his foot which wakes him up at night. There is a phone message record dated December 20, 2002, concerning the claimant and his questions about his medications. This note indicates that x-rays done on December 16, 2002, of the claimant's left knee revealed severe arthritis and a torn ligament. Dr. Robert Teitelbaum writes on December 27 that he has seen the claimant for follow up of his degenerative joint

disease of his left knee, noting that he was treated two weeks ago with Vioxx for his left knee pain. The doctor notes that there is no swelling, redness or fever and he is able to ambulate up and down stairs. The claimant was prescribed medications, it was recommended that he do to strengthening exercise and he could return to regular work. The claimant underwent an EMG-NCV on February 10, 2004, which revealed mixed motor and sensory polyneuropathy of uncertain etiology and that the EMG portion of the test was normal. This test showed no evidence of a radiculopathy or myopathy. Dr. Wendell Ross writes on February 11, 2004, that the claimant has a polyneuropathy of both lower extremities that is causing his symptoms. This doctor's note sets forth that the claimant reports that the Prednisone has given him some improvement over the last week. After examination, Dr. Ross diagnosed the claimant with polyneuropathy and prescribed Neurotin. Dr. Ross also prescribed medications for the claimant's headaches and hypertension. On March 3, 2004, Dr. Ross writes that the claimant reports that he is much improved from taking the Neurotin. The claimant reports that since he is back at work his leg and thigh are giving him problems and requested a muscle relaxer which was prescribed. On February 14, 2005, Dr. Ross writes that the claimant suffers from an idiopathic neuropathy noting that the claimant thinks that it is caused by an exposure to chemicals at work. Dr. Ross notes that as long as the claimant takes his Neurotin he is doing quite well. After examination which was normal in all aspects, the claimant was continued on his

medications. Dr. Ross writes on October 26, 2005, that he has seen the claimant for his idiopathic neuropathy. The claimant reports to the doctor that he believes that the Toluene exposure at work caused his neuropathy. In response to a call from the claimant's attorney, Dr. Ross writes that he informed the attorney that he could state within a reasonable degree of medical certainty that he knew that Toluene could produce neurological abnormalities but that he was not an expert in this area. Dr. Ross further writes that certainly it is within the realm of possibility that the Toluene could have contributed to or caused the claimant's idiopathic neuropathy. The claimant reports that he is no longer working and that he feels tired and worn out. The claimant reports that when he gets up in the mornings he is confused although he does know his family but he can begin a task and before he finishes he will forget what he is doing. The claimant testified that sometimes he talks out of his head and he does a lot of falling to the left and he feels weakness in the left side of his body. Dr. Ross concludes that he reported to the claimant that he did not feel like the evaluation of the claimant's neurologic symptoms was within his training as a family physician but would be happy to refer him to a neurologist for evaluation. On July 11, 2006, Dr. Ross writes that he has seen the claimant after a years absence. The doctor writes that they were treating the claimant for his idiopathic neuropathy in both of his lower extremities as well as hypertensive cardio vascular disease. Dr. Ross notes that the claimant is on Atenolol for hypertension as well as Neurotin. The doctor writes

that the claimant reports that he saw a program on TV about peripheral arterial disease and says that he thought his symptoms fit. Upon examination, Dr. Ross notes that the claimant has what appears to be a Baker's cyst on the left knee and that he has poor capillary filling in that the doctor could not palpate any pulses either dorsalis pedis or posterior tibial of either of his ankles. The doctor writes that, in his opinion, this certainly could represent atherosclerosis of the arteries of his lower extremities and recommended that they get a doppler arterial study. Dr. Ross writes on October 6, 2005, that the claimant suffers an idiopathic neuropathy, proven by electromyographic evidence. The doctor writes that there is a strong possibility that this neuropathy developed after the claimant had worked around chemicals at the plant where he was employed.

The claimant also submitted non medical information which he had taken off the internet. The internet information seems to have been taken on at least three different dates and the claimant has made personal highlights and notes throughout these reports. Although this information from the internet perhaps contains some pertinent information, it would be difficult to discern how specifically it pertains to the claimant and the problems which he is experiencing.

After a complete review of this record, I find that the claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury in the form of polyneuropathy while working for the respondent. The claimant has

testified that he worked with a product called DoALL which contained Toluene from 1997 to 2000. The medical records in this matter begin in 2002 when the claimant was complaining of left knee pain which was determined to be severe arthritis also referred to as degenerative joint disease as well as a torn ligament. The next medical record is a EMG-NCV report signed by Dr. Griggs indicating that the test revealed that the claimant has mixed motor and sensory polyneuropathy of uncertain etiology but the EMG portion of the claimant's test was normal with no evidence of a radiculopathy or myopathy. Dr. Ross, the claimant's primary treating physician, reported to the claimant that he did not feel he could properly evaluate the claimant's neurologic symptoms because his training was as a family physician but would refer him to a neurologist. It is also noted that Dr. Ross consistently reports that the claimant has an idiopathic neuropathy. Dr. Ross does state based on information provided to him by the claimant that the product Toluene could produce neurological abnormalities. I am treating this claim as a claim for an occupational disease based on the claimant's testimony that his exposure to a certain product has caused his polyneuropathy. I, however, find based on the information in this record that the claimant has failed to prove a causal connection between his employment and the occupational disease. Therefore, this claim should be denied in its entirety.

The respondents have raised the defense of the statute of limitations barring this claim under several theories. First it is

argued that under Ark. Code Ann. §11-9-702(a)(2) the law sets forth;

A claim for compensation for disability on account of injury which is either an occupational disease or occupational infection shall be barred unless filed with the Commission within two years from the date of the last injurious exposure to the hazard of the disease or infection.

The claimant has testified that his last exposure to the product DOALL was at the latest in the year 2000 and his claim for benefits was not filed with the Commission until October 8, 2005. It is also argued that under Ark. Code Ann. §11-9-601(g)(1)(B) that an employer shall not be liable for any compensation for an occupational disease unless;

Disability or death results within one year in case of any other occupational disease---after the last injurious exposure to the disease in the employment.

Again the claimant has testified that his last exposure was in 2000 and the earliest medical records we have that would indicate that the claimant might have any claim of a problem to his lower extremities was in February 2002 when he was seen for complaints with his left knee. The respondent lastly argues that under Ark. Code Ann. §11-9-306(2)(a) written notice must be given to the employer of an occupational disease within ninety (90) days after the distinct manifestation. The claimant has testified that he had symptoms as early as 1998 but at least by February 10, 2004, it was determined that he had polyneuropathy. The claimant has testified that notice the employer was given at the time that he filed his AR-C which was received at the Commission on October 8, 2005, which

is well beyond the ninety (90) day requirement. Based on Arkansas law as well as the testimony and the medical records in this matter, it would appear as though the claimant's claim for benefits should be barred as a result of the statute of limitations. However, in past opinions anytime that I have found that the statute of limitations barred a claim, that finding has been reversed. I am not specifically finding that this claim is barred due to the various statute of limitations defense because I have found that the claimant has failed to meet his burden of proving a compensable injury according to Arkansas law and the facts.

#### FINDINGS & CONCLUSIONS

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.

2. On all pertinent dates, the relationship of employee-employer-carrier existed between the parties.

3. The claimant is entitled to a compensation rate of \$385.00 for temporary total disability and \$289.00 for permanent partial disability.

4. The claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury in the form of polyneuropathy while working for the respondent. Based on the information in this record the claimant has failed to prove a causal connection between his employment and the occupational disease. See discussion above.

ORDER

The claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury in the form of polyneuropathy while working for the respondent. Therefore, this claim for benefits should be denied in its entirety.

IT IS SO ORDERED.

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ELIZABETH DANIELSON  
ADMINISTRATIVE LAW JUDGE