

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F513426

DEBRA A. CHUK, EMPLOYEE

CLAIMANT

EPOXYN PRODUCTS, EMPLOYER

RESPONDENT

**NEW HAMPSHIRE INSURANCE COMPANY,
C/O AIG CLAIM SERVICES**

RESPONDENT

OPINION FILED SEPTEMBER 4, 2007

Hearing before Administrative Law Judge O. Milton Fine II on June 6, 2007, in Mountain Home, Baxter County, Arkansas.

Claimant represented by Mr. Frederick S. "Rick" Spencer, Attorney at Law, Mountain Home, Arkansas.

Respondents represented by Mr. Jarrod Parrish, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On June 6, 2007, the above-captioned claim was heard in Mountain Home, Arkansas. A prehearing conference took place on March 12, 2007. A prehearing order entered that same day pursuant to the conference was admitted without objection as Commission Exhibit 1. At the hearing, the parties confirmed that the stipulations, issues, and respective contentions, as amended, were properly set forth in the Order.

Stipulations

At the hearing, the parties discussed the stipulations set forth in Commission Exhibit 1. With an additional stipulation reached at the hearing, they are the following four, which I accept:

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.

2. The employee/employer/carrier relationship existed at all relevant times, including on or about August and December 2004.
3. The Claimant has suffered a compensable work-related injury in the form of contact or allergic dermatitis to epoxy resin and dust, for which Respondents have accepted compensability and have paid some benefits.
4. Respondents have controverted Claimant's entitlement to any further benefits, including an impairment rating.

Issues

At the hearing, the parties discussed the issues set forth in Commission Exhibit 1. The parties added an issue regarding the validity of her impairment rating, and reserved the issue concerning the setting of Claimant's average weekly wage. The following were litigated:

1. Whether the Claimant is entitled to reasonable and necessary medical treatment
2. Whether the Claimant is entitled to the fifteen percent (15%) impairment rating awarded her.

Contentions

The contentions of the parties are as follows:

Claimant:

1. The Claimant contends that she sustained a compensable injury and is entitled to ongoing reasonable and necessary medical treatment related to her injury.

Respondents:

1. Respondents contend that all appropriate benefits have been paid with regard to this claim.
2. Respondents assert a set-off for any unemployment benefits received in the event Claimant is found to be entitled to further indemnity benefits.
3. Respondents assert credit for a \$93.00 overpayment of temporary total disability benefits.
4. Respondents contend that the medical records do not support entitlement to continued medical care, nor do they support entitlement to further indemnity benefits.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole, including 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, I hereby make the following findings of fact and conclusions of law in accordance with Ark. Code Ann. § 11-9-704 (Repl. 2002):

1. The Arkansas Workers' Compensation Commission has jurisdiction over these claims.
2. The stipulations set forth above are reasonable and are hereby accepted.
3. Because admission of Claimant's deposition will help to "best ascertain the rights of the parties," Claimant's proffered Exhibit 2 should be admitted into evidence.

4. The testimony of Emily Anderson, Claimant's mother, should be admitted into evidence, notwithstanding her presence in the courtroom after the invocation of the rule.
5. Claimant has proven by a preponderance of the evidence that she is entitled to reasonable and necessary medical treatment.
6. Claimant has not proven by a preponderance of the evidence that she is entitled to a fifteen percent (15%) impairment rating under Page 280, Table 2, Class 2, of the AMA Guides.
7. Claimant has proven by a preponderance of the evidence that she is entitled to a nine percent (9%) impairment rating to the body as a whole under Page 280, Table 2, Class 1, of the AMA Guides.

PRELIMINARY RULINGS

Admission of Claimant's Proffered Exhibit 2

At the close of the direct examination of Claimant, she moved for admission of her May 12, 2006 deposition. Respondents objected not on the basis of the lack of notice that the deposition would be offered, but because the deposition is a discovery and not an evidentiary one. Respondents' counsel stated:

[The deposition] is full of inadmissible evidence. At the time I took the deposition, I was not notified it was an evidentiary deposition. I certainly would have tailored my questions more towards admissible evidence as opposed to—I mean, there's questions in there where I'm asking the claimant what doctors have said, what non-representatives of the company have said. It's full of inadmissible evidence. I understand the Rules of Evidence are relaxed in a workers' comp. hearing, but I certainly think it would prejudice respondents if you allow that into the record.

I took the matter under advisement at the hearing and permitted Claimant to proffer the exhibit.

Arkansas Code Annotated § 11-9-705(a)(1) (Repl. 2002) provides:

In making an investigation or inquiry or conducting a hearing, the Workers' Compensation Commission shall not be bound by technical or statutory rules of evidence or by technical or statutory rules of procedure, except as provided by this chapter, but may make such investigation or inquiry, or conduct the hearing, in a manner that will best ascertain the rights of the parties.

The Commission has a "great deal of latitude in evidentiary matters." *Bryant v. Staffmark, Inc.*, 76 Ark. App. 64, 61 S.W.3d 856 (2001). After due consideration of this matter, I find that admission of Claimant's deposition will help to "best ascertain the rights of the parties." Thus, Claimant's proffered Exhibit 2 should be and is hereby admitted into evidence.

Admission of Testimony of Emily Anderson

At the beginning of the hearing, after the parties had identified their witnesses and they were sworn in, Respondents' counsel invoked the rule, resulting in the sequestration of those waiting to testify. Because Emily Anderson, the mother of Claimant, was not identified as a witness and sworn in, she remained in the hearing room. However, during the cross-examination of Claimant, the following colloquy took place:

[CLAIMANT'S COUNSEL]: Your Honor, for the record, I just would want to point out, since he brought up the mother, I'm having her excluded too, since he has invoked the Rule, 'cause I would like to use her with regard to that issue, if he wants to make that an issue. So I am excluding her now knowing that he's going to be talking about that.

[RESPONDENTS' COUNSEL]: I think it's too late, Your Honor. She's been in here and heard the testimony. I certainly don't want her coming back in and testifying.

I told the parties that the matter would be taken up once Ms. Anderson was called. Respondents' counsel renewed his objection, and I took it under advisement and allowed Claimant to proffer Ms. Anderson's testimony.

The authority of a party to "invoke the rule" comes from Ark. R. Evid. 615, which provides in pertinent part: "At the request of a party the court shall order witnesses excluded so that they cannot hear the testimony of other witnesses, and it may make the order of its own motion." As noted above, Ark. Code Ann. § 11-9-705(a)(1) states that the Commission is not "bound by technical or statutory rules of evidence" Hence, Ms. Anderson's testimony may be admitted on that basis alone. Moreover, there is only a very narrow discretion to exclude the testimony of a witness who does not comply with Rule 615, and that narrow discretion can be exercised by the trial judge only when the noncompliance is had with the "consent, connivance or procurement of a party or his attorney." *Daniels v. State*, 293 Ark. 422, 739 S.W.2d 135 (1987). That did not occur here; again, Ms. Anderson was not identified as a witness at the time the rule was invoked, nor did she need to be. She testified only concerning her Neurofibromatosis. Her need to testify was not apparent until Respondents' cross-examination, when this condition was first brought up. Respondents' contentions, for example, do not address it.

Since exclusion of the testimony is not called for, the fact that this witness remained in the courtroom after sequestration goes to her credibility. *Daniels, supra*. The determination of a witness' credibility and how much weight to accord to that person's testimony are solely up to the Commission. *White v. Gregg Agricultural Ent.*, 72 Ark. App. 309, 37 S.W.3d 649 (2001). The Commission must sort through conflicting evidence and determine the true facts. *Id.* In so doing, the Commission is not required to believe the

testimony of the claimant or any other witness, but may accept and translate into findings of fact only those portions of the testimony that it deems worthy of belief. *Id.*

Finally, I note that while Ms. Anderson's name was not among those listed as witnesses in the prehearing order, Respondents did not object on the grounds that they were given insufficient notice. Therefore, Ms. Anderson's testimony will be admitted and given due weight.

CASE IN CHIEF

Summary of Evidence

_____ Five witnesses testified at the hearing: Claimant; Emily Anderson, the mother of Claimant; David Chuk, the son of Claimant; Tina Weaver, an acquaintance of Claimant; and Barry Chase, the General Manager of Respondent Epoxyn Products.

In addition to the prehearing order discussed above, also admitted into evidence in this case was Claimant's Exhibit 1, medical records of Claimant, consisting of one index page and 12 separately numbered pages; Claimant's Exhibit 2, the transcript of her deposition taken May 12, 2006, consisting of 54 pages; Respondents' Exhibit 1, medical records of Claimant, consisting of one index page and nine separately numbered pages; Respondents' Exhibit 2, non-medical records including Claimant's application for unemployment benefits, her wage records from Wal-Mart, her responses to interrogatories and request for production of documents, and a wage statement and calculation of her average weekly wage; and Joint Exhibit 1, the deposition of Dr. Philip Hardin taken May 17, 2007, consisting of 65 pages of testimony and six separate exhibits.

Testimony-Hearing

Debra Ann Chuk. Claimant testified that she is 48 years old. Upon moving to Mountain Home, she went to work part-time for a nursing home. She was later hired to work for Respondent Epoxy Products (hereinafter "Epoxy"). The company makes tables used in hospitals and laboratories. The tops are coated with a hardening/sealing substance that enables them to be used in these areas. Claimant's job was at the "blackening table," where the chemicals were applied to harden the tables.

While she was unable to testify that there was a change in the formula of the chemicals used at Respondent Epoxy, she did state that she began to have a problem with the chemicals there at the end of June 2004. She went to the company nurse, and was given non-prescription Benadryl cream. Despite multiple treatments, her condition worsened to the point where her hands swelled up. Her right hand was worse than the left. Claimant testified that she was unable to turn her car's ignition key. She stated that her skin bled and began to peel away. The rash was behind her ears, and on her face and legs as well.

She returned to the nurse and told her that she needed to see a doctor. Claimant was sent to Dr. Richard Burnett, the company doctor, in November 2004. Dr. Burnett gave her pills that helped to alleviate the hand swelling and skin peeling. He later referred her to Dr. Philip Hardin. Dr. Hardin instructed her to stay away from the hardening table, and Respondent Epoxy accommodated her. Later, when the rash cleared up, she was put back on regular duty, on the hardening table. The rash returned within a day.

At the hearing, Claimant displayed, and I observed, a reddening under her left arm that appeared to begin about three inches below the wrist and extended to a point about

three inches above the elbow, all on the inside of the arm. There were red spots and what appeared to be a crosshatch pattern.

Claimant was fired from Respondent Epoxy. She works at a hospital, and treats the affected areas with Benadryl. Claimant stated that if she does not treat the area, it gets irritated and she has to scratch it. The rash came back recently after she ran out of the cream that Dr. Hardin prescribed for her approximately two months prior to the hearing. She did not have a rash between 2005 and 2007 due to the cream, which she used to head off flare-ups that threatened once every couple of months. Benadryl is not as effective as the prescription cream. Even when a rash is not present on her right hand, there is dryness that causes itching. And her hand itches all of the time, ever since the original injury.

Claimant testified that she has not continued to treat with Dr. Hardin because he is not in her provider network in her current job, and she cannot afford to pay him out of her pocket. After she left Respondent Epoxy, she attempted to get Respondents to pay for her visit to Dr. Hardin. However, they refused. She stated that Dr. Hardin is the only dermatologist in the area; however, she has not researched what dermatologists are in her health plan. It is her desire that Respondent Epoxy be required to pay for any additional visits to Dr. Hardin that she may need to get good creams to take care of her medical problem. Also, she would like for Respondents to be directed to pay the fifteen percent (15%) rating that Dr. Hardin gave her.

When questioned by Respondents, Claimant stated that she is allergic to penicillin. She testified that she has "Neurofibrosis," apparently referring to Neurofibromatosis, which is reflected in her medical records, *infra*. At the hearing, she had bumps from this condition on her left arm and shoulder. The bumps are not red and do not itch. The mark on her

right forearm at her deposition was a burn and is unrelated to her claim. The rash on her arm, which was red due to scratching, was worse the week prior to the hearing. When asked to explain the discrepancy between her testimony at the hearing that she only recently ran out of the prescription cream and her deposition testimony in May 2006 that she was out at that time, Claimant explained that she later found an additional box of cream when she was moving.

Claimant testified that she began having problems at Respondent Epoxy within two weeks starting there. At the time, she wore protective gloves. Toward the end of her employment, she was provided with a suit and other protective equipment, but was still breaking out. She denied that she had the rash when she was working in the warehouse, away from the factory. Claimant admitted that at her deposition, she testified that her only residual symptom was intermittent itching. But she stated that at the time, she still was using the cream Dr. Hardin had provided. Since leaving Respondent Epoxy, the rash has not returned to the areas around her ears and face. When she was away from the black dye at the blackening station, her rash went away. Dr. Hardin has instructed her not to work around black dye or epoxy resin vapor or dust. She does not have any allergies to soaps or cleaning products. In fact, she used such products when she became a janitor at Respondent Epoxy to stay away from the blackening station.

She stated that all of her medical bills related to the contact dermatitis have been paid. Claimant has not attempted to see Dr. Hardin since the summer of 2005. He is not in her provider network, and the nurse at Respondent Epoxy told her that Hardin was the only dermatologist in town. She has not attempted to charge any treatment of her contact dermatitis to her private health insurance. Since leaving Respondent Epoxy, she has held

various jobs, and is currently a hospital dietician. She has not left a job because of the skin condition, and has not turned down a job because of it—it has only kept her from working at Epoxyn and at places that use epoxy resin. When she collected unemployment benefits, she was truthful in stating that she was ready, able and willing to work.

When questioned by me, Claimant testified that a blacking table is where the table tops in the factory come for processing. Blacking is applied to the edges, and then a clear hardening agent is applied. Hardening and blacking are applied at the same work station.

With regard to her rash, she stated that the cream that Dr. Hardin supplied would prevent an eruption of an area of itching into a rash. Prior to the most recent flare-up, viewed on the inside of her left arm at the hearing, the last time she experienced a flare-up was in 2005.

Emily Anderson. Called by Claimant, Anderson testified that she is the mother of Claimant. Her family has a genetic disease, which she referred to as “Neurofibrombosis.” Anderson stated that it is also known by the name “Von Recklinghausen.” The condition has left Anderson covered with bumps that are that generally the same color as her skin. However, some of the bumps have a pink tint. The bumps are not a rash and do not itch.

When questioned by Respondents, Claimant stated that while the bumps have a tendency to rub against her clothing more than regular, smooth skin, she feels no irritation at all. She has been told that the bumps appear due to pregnancy. Anderson is covered with them because she had six children. She is still acquiring new bumps, but not at the rate she was when she was pregnant.

When questioned by me, Anderson testified that she does not undergo any treatment to alleviate the condition or to prevent the bumps from itching. No treatment exists.

David Chuk. Called by Claimant, Chuk testified that he is the son of Claimant. He is an only child, and has been around his mother the past three to four years. He stated that he observed her condition regarding her rashes and the epoxy. Claimant continues to have itching in her hands, and has rashes from time to time, including at present. He has observed her using creams on her hands and putting it on her arms often. She sometimes has problems with itching even after using the cream.

On cross-examination, Chuk stated that to his knowledge, Claimant has not gone to the doctor since August 2005. He reiterated his testimony that she had rashes from time to time, but admitted that Claimant was in a better position to know what her condition was.

Tina Weaver. Call by Claimant, Weaver testified that her father is a neighbor of Claimant. She has known Claimant for approximately three years, and sees her all the time. She was acquainted with her prior to her epoxy problems. Weaver stated that Claimant did not have rashes prior to going to work at Respondent Epoxy. Claimant wears glasses now, but did not do so before her problems began. She presently has a rash. Weaver has observed Claimant scratching herself, and experiencing itching in her hands.

On cross-examination, Weaver admitted that she is not aware of all of Claimant's medical treatment, and is not a better judge of her condition than Claimant herself is.

Barry Chase. Called by Respondents, Chase testified that he has been the general manager of Respondent Epoxy for approximately six years. In this capacity, he is "slightly familiar" with Claimant's claim. Epoxy is a manufacturer of laboratory work surfaces. Its primary product is epoxy resin countertops, which is a chemical-resistant product used in laboratories, hospitals, chemistry labs, and educational institutions. He described the manufacturing process as follows:

[T]he, the basic process is, we purchase raw materials, liquid epoxy resin, combine this liquid epoxy resin with other raw materials such as sand, some other chemicals. And this has got to have a hardener to, to activate the epoxy resin. It's a thermal set process, so it's mixed together and, and poured into, into molds to generate flat sheets of material.

. . .

We produce, you know, epoxy resin is, is only used, I'm gonna say it's a clear product. It's not necessarily clear, but it's not colored. So, pigments are used to create the coloring of the product, whether it be black, and we offer 11 standard colors to the industry. What is referenced as blacking, that is a, that's a, a word that's used, it's really an edge dressing process where we edge dress the edges of the countertops after they come through the manufacturing facility. And that edge dressing is where we're actually doing the cleaning up of the tops, removing dirt, dust, residue. And basically, applying this edge dressing, which brings the colorant back to those edges after our manufacturing and machine process. It's a two part epoxy.

Chase admitted that some employees have been found to be allergic to epoxy resins.

However, there are other employees who are not allergic, and have worked at the facility for 20 to 25 years. Employment at Respondent Epoxyn is seasonal; during the summer, there are at least 160 employees. Chase testified that at present, he is not aware of any employees complaining at present about having an allergic reaction. He has "no complaints on file" from the employee who replaced Claimant in the edge dressing department. However, he admitted that there currently are five or six claims pending against Epoxyn from employees regarding epoxy resin allergies.

Chase testified that Respondent Epoxyn undergoes an annual air quality check by an independent company, which performs the test during operating hours and places monitors on individuals. No compliance issues have been found as a result of the checks.

In addition, Chase stated that personal protective equipment is available for use by the employees. The edge dressing area requires safety glasses, ear plugs, a chemical-

resistant glove and a Tyvek sleeve. In addition, Tyvek suits are available for use even if they are not required in a particular area. Chase testified that in his experience, employees who are allergic to epoxy resin experience a reaction even if wearing protective gear. There is no area in the facility, even the office and warehouse, where one is not exposed to a degree to epoxy resin, or to the dust of vapor thereof.

On cross-examination, Chase stated that Claimant was “terminated due to a personal illness, being allergic to epoxy resin.” He testified that the firing was based on the doctor’s recommendation that she not be exposed to the resin. Chase agreed that it is possible that an employee might not report an allergic reaction for fear of being terminated, but he doubted that a person would do that and place his health in jeopardy. When Claimant worked at Respondent Epoxyn, the first and second shifts worked eight hours, the third worked seven and a half, and Saturdays were worked during the peak summer months.

Chase was unable to explain why the air quality evaluations he testified about were not provided to Claimant during discovery.

Testimony-Deposition

Debra Ann Chuk. Claimant was deposed on May 12, 2006. As noted above, the transcript of her deposition was admitted as Claimant’s Exhibit 2. She testified the highest grade she completed was her sophomore year of high school. She has not gotten her GED, but is working toward a CNA license. Originally from Illinois, where she worked for a law firm, bank, and plastics manufacturer, she moved to Arkansas in 2004. She worked for Respondent Epoxyn for 13 months, from June 2004 to July 2005. Thereafter, she worked at Wal-Mart and at Home Care before going to work in the dietary area of Baxter Regional

Hospital in February 2006. She drew unemployment benefits during the gaps in her employment.

Other than at Epoxyn, she has never had any skin problems in the workplace. She is allergic to Amoxicillin, which makes her itch but does not cause a rash. Household chemicals do not bother her. The scratch test that Dr. Hardin performed on her showed that she is allergic to paraphenylenediamine, which is the black dye used for the edge dressing at the blacking table at Epoxyn. Dr. Hardin told her that she was allergic to epoxy resin as well. She does not know if she is allergic to nickel sulfate. She has a genetic skin condition the name of which she could not recall; her mother and sister also have it. The condition causes permanent bumps, but not blisters or broken skin. She is not being treated for the condition.

Claimant testified that she first started having problems at Respondent Epoxyn in June 2004, a couple of weeks after she began working there. Her hand started turning red. Her eye swelled up completely after some of the material splashed into it. She reported these conditions to her supervisor, John Clark, and to the company nurse, Ida, who gave her non-prescription Benadryl cream and eye drops. She was told that barrier cream was not available at Epoxyn. Although the nurse continued to supply her Benadryl, the condition did not improve; her hand swelled one and a half times its normal size. A cut she got on her hand became infected. Her hands began to bleed and the skin on it began to peel. The condition of her right hand, which is her dominant one, was worse than the left. The rash appeared in her ears and around her eyes, and spread down her arms and to her legs. In July 2004, Claimant demanded to see a doctor; however, the nurse simply told her to continue to use the cream. In November of that year, she was finally allowed to see a

physician. Dr. Burnett gave her a steroid dose pack and some cream for her hands. She is now out of prescription cream.

Thereafter, until January 2005, she was reassigned to sweep floors in the entire factory. In January she began work in the labware area, making plastic dishes and ultimately training two individuals to work there before being reassigned to operate a saw. Claimant stated that she had no flare-ups during this entire period.

Claimant testified that at a certain point, she was told that her doctor had put her back on regular duty. She was reassigned to the blacking table. Within three hours, she was breaking out. She worked until the end of the shift, and then told the nurse what had occurred. She was temporarily reassigned to custodial duty. At a certain point, Claimant, along with three or four others, were let go. She disagreed with the termination because she stated she was able to work in the labware and warehouse areas, and was able to clean the entire factory, even among the fumes, without breaking out. The nurse, however, told her that there was no work for her there.

Claimant stated that since leaving Respondent Epoxy, she has not seen Drs. Hardin or Burnett because she did not have insurance. She now has insurance at Baxter Regional, but has not used it. She did not have a short-term disability policy. At one point she was receiving notices that Dr. Hardin had not been paid. She still has itching on her forearm and hands, and her right eye still bothers her. She now has to use eyeglasses to read. Claimant has no scarring. She has not had to turn down any jobs because of her condition.

At Respondent Epoxy, she wore Latex gloves. Blue rubber gloves and aprons were also available for use. She testified that she worked in the same area as Barbara Plauk and Melvin Popejoy. A person named "John" was the one of the only people who worked

in the blacking area but did not develop a reaction. Claimant said she could not recall if there were other such individuals. At another point, she stated that she knew of people who were still working at Epoxyn who were having allergic reactions but were afraid of being terminated. Nine people worked in the area; three tables and three shifts.

Dr. Philip Hardin. Dr. Hardin was deposed on May 17, 2007. As noted above, the transcript of his deposition was admitted as Joint Exhibit 1. He testified that he is board-certified in Dermatology and Dermatopathology. Claimant, along with Melvin Popejoy and Barbara Plauck, were patients of his. He first saw Claimant on January 27, 2005. She told him that she had been under treatment by Dr. Burnett for hand dermatitis for approximately one month. Claimant was being treated with aquafor ointment and wearing cotton gloves over it while at work for Respondent Epoxyn. Dr. Hardin testified that his examination of her showed primarily hand dermatitis, with her right hand worse than her left. Her fingertips had significant peeling, and she had a fine neurathemitis rash on her hands along with extremely dry skin. Her medical records from December 2004 reflected that she had a rash on both hands and forearms, with the right being worse than the left.

Dr. Hardin testified that he has been a dermatologist in the Mountain Home area for thirty years. There are a lot of boat manufacturers in the area. Dr. Hardin stated that while he is not a polymer chemist, he is “pretty familiar with the medical implications” of epoxy. He stated that sweeping would not expose someone to a toxic resin in a significant way. Dr. Hardin testified that “[t]he resin is not particularly volatile. It is a problem only in its liquid form and the vapors when it is curing. Once it’s cured, in dust form or not, the stuff is inert and its not a sensitizer.” But the fumes emitted during the curing process are allergenic. Controlled ventilation is required to limit harm. Dr. Hardin testified that he was a

dermatologist in the U.S. Navy at the naval air station in Corpus Christi, where Huey helicopters were rebuilt. He stated that he saw a number of contact dermatitis cases there from the vapor phase of the curing epoxy–epoxy paint was utilized. Once the Navy modified the ventilation system, he no longer saw problems. He has spoken to the nurse at Epoxyn about their air flow situation.

He stated that 80 percent (80 %) of reactions are to the epoxy resin, while the rest of the reactions are to the hardener. There are 20 or more resins that can be used. The resins with lower molecular weight wet the skin and penetrate it better, and thus are more effective sensitizers. Hardeners are generally more volatile than the resin.

Dr. Hardin testified that after he first saw Claimant on January 27, 2005, he saw her five more occasions. The last was on July 25, 2005. He did not specifically recall ever taking her off of work. Following her first visit, he sent her home with a treatment outline. She was to soak her hands in a mixture of bath oil and water 20 to 30 minutes twice a day, followed by an application of a strong cortico-steroid cream, and then by a barrier cream an hour later. In addition, Claimant was to avoid solvents, detergents, and food juices. A patch test performed on her on March 4, 2005 showed a mild reaction to nickel sulfate and a two-plus reaction to epoxy resins—which Dr. Hardin stated is a significant reaction. Moreover, she had a significant reaction to paraphenalenediamine, which is permanent black dye. He instructed her to avoid contact with epoxy resin or vapors from reacting epoxy, along with paraphenalenediamine. When Dr. Hardin saw Claimant was on June 23, 2005, she told him that she had been put back on the blackening table. Again, she had a rash on her forearms, legs and neck. He treated her with topical steroids. The last time he saw her, the rash had cleared up. He advised her that these allergies were permanent and that she had

to avoid exposure to the substances described above on an ongoing basis. While he did not take her off work, he put her on a permanent restriction regarding these substances. Moreover, Claimant would have to avoid exposure to solvents, detergents and shampoo because she has a long-term impairment of the barrier function of her skin, and will likely get dermatitis from exposure to these substances. Abnormal permeability will persist for 18 to 24 months after dermatitis has cleared up. Thereafter, while some exposure to these substances is okay, lengthy exposure in a workplace setting is not.

At the deposition, Dr. Hardin looked at the AMA Guides to the Evaluation of Permanent Impairment (hereinafter "AMA Guides") and opined that based on page 289, Table 2 of the AMA Guides, Claimant belonged in Class 2 with "probably about 15% impairment." He stated that he was giving this opinion within a reasonable degree of medical certainty. Based on the fact that he has not seen Claimant for a couple of years, Dr. Hardin testified that indicates that she is either tolerating her problems, obtaining care elsewhere, or is doing okay without treatment. He testified that skin is an organ and that Claimant's skin has been compromised by the epoxy exposures.

When questioned by Respondents, Dr. Hardin confirmed that he was assigning Claimant a fifteen percent (15%) rating. When asked to explain why he assigned Claimant, Plauck and Popejoy as being at that level, when Class 2 ranges from ten percent (10%) to 25 percent (25%), Dr. Hardin explained:

It's picking a number . . . it's closer to 10 than 24. You know, I don't think that they fit the minimal requirements for that, but, you know, 15% is the number that comes to, seems reasonable to me given the assessment.

He stated that the ongoing episodes of dermatitis, along with the positive reactions on the patch tests, form the objective bases for the rating, along with where and when she broke

out. Dr. Hardin agreed that the Class 2 category he was placing Claimant in required signs and symptoms of the skin disorder to be present or intermittently present; but he does not know what has happened to Claimant since he last saw her—whether she has had further breakouts or suffers from any limitations in her daily life. But he testified that “[a]ssigning a disability is making a prediction. That [Claimant will require further treatment] was my prediction, that it’s likely that [she and Ms. Plauck] will.” However, he was not able to opine whether Claimant remained in her healing period because he has not seen her recently. He told her that she could return if she had any problems or flare-ups. But either Claimant or Plauck told him that she could not afford to see him.

He also stated that while Claimant had a positive test reaction to permanent black dye, Plauck and Popejoy did not. Nickel sulfate, while part of the test, is not relevant to the case at hand. Dr. Hardin did not observe her as having a problem with heat and friction in her affected areas. While if Claimant did not have any contact with epoxy resin for 24 months and did not react to detergent in that time, her skin might go back to normal, she has a lifetime sensitization to these substances in her immunological memory. Any further contact, no matter how far down the road, will cause her to break out. He stated that while it was a possibility that she could make a complete recovery, he thought it was improbable. However, he could not say within a reasonable degree of medical certainty that she is going to require future treatment, since he has not seen her since 2005. He testified that there is no medical treatment to improve the skin condition other than staying away from irritants and reactants. If she stays away from these items, and barring another medical condition,

Claimant is capable of working. But Dr. Hardin did not think that her resilience was normal. He was not aware that Claimant went to work for Wal-Mart after being terminated by Epoxyn.

Dr. Hardin testified that there is approximately five percent (5%) of the population that seems resistant to contact sensitization. Exposure to substances such as epoxy resin would not bother them. He did not believe that Claimant or the others had anything that made them more susceptible to the initial breakout. When asked to explain why some employees of Epoxyn have not gotten dermatitis, he stated:

I just don't think their number's come up yet. Epoxy resin is not a horrible sensitizer like poison ivy. With poison ivy, almost everyone who gets in it will become sensitized on one or two exposures to it. Nonetheless, you know, [epoxy is] a major cause of industrial disability, but it requires, you know, multiple exposures before you come up with it.

He testified that it is possible, through adequate ventilation and the supplying of vinyl gloves, to protect individuals such as Claimant while allowing them to continue to work at Epoxyn. But he added, "[w]hether it is practical or economical[ly] feasible is another question." Using a heavier molecular weight of epoxy resin would help them as well. Dr. Hardin opined that it was in Claimant's best interest if conditions were modified at Epoxyn to enable her to work there. He admitted that even if the ventilation system were improved, some people will still develop contact dermatitis from splashing epoxy resin on their skin and/or refusing to wear protective equipment.

He testified that he has dealt with approximately 12 to 13 contact dermatitis cases that have come from Respondent Epoxyn during his 30-year career. Presently, there is one other dermatologist in the Mountain Home area, but Dr. Hardin was not aware if the doctor had treated anyone for contact dermatitis related to epoxy resin. When asked, Dr. Hardin

opined that contact allergens and primary irritants have a synergistic effect in causing a dermatitis.

He stated that soap is a primary irritant, and he has instructed Claimant to avoid it. Sufficient exposure to it will produce dermatitis on anyone. The more damaged and more sensitive one's skin is, the less exposure it takes to cause a reaction. He stated that once the barrier of the skin is damaged, it is very hard to get it to reconstitute. Dr. Hardin analogized it to "falling through thin ice." While he has not seen Claimant in a while, based on his experience, she should have darkening of the skin where she had the dermatitis.

Records-Medical

The medical records of Claimant that were introduced at the June 6, 2007 hearing and constitute Claimant's Exhibit 1, Respondents' Exhibit 1, and Exhibits 5 and 6 of Joint Exhibit 1 reflect the following:

On June 21, 2004, Claimant in providing a medical history stated that she is allergic to Amoxicillin, that it causes a rash.

On December 31, 2004, Claimant presented to Dr. Richard Burnett with a rash on both hands and forearms, with the right hand being worse than the left. The onset of the condition was one month ago, and has gotten much worse. She was assessed as having an allergic reaction, along with Neurofibromatosis, was released to regular duty, and was instructed to avoid chemicals at her work table and to cover her hands. Dr. Burnett prescribed topical creams and put her on a medrol dose pak. When she returned to see him on January 3, 2005, the rash on her hands and forearms had not improved. His assessment was "[d]rug allergy vs. contact dermatitis." During her January 10, 2005 visit, Dr. Burnett found that the areas affected by the rash had improved. However, the Claimant

still had itching. He noted that her job assignment was now “sweeping floors at work all day.” He kept her on light duty and referred her to Dr. Hardin.

Dr. Hardin saw Claimant on January 27, 2005. Claimant told him that she was now wearing cotton gloves under rubber gloves at work. Her right hand was noted to be worse than her left. The top skin layer on her fingertips was peeling off. The rash was still present on her hands, along with extreme dryness, and was on her ear as well. He assessed her as having contact allergic hand dermatitis, and instructed her to avoid soap, detergents, juices, etc.

On March 1, 2005, Claimant underwent a patch test. The test showed a reaction to nickel sulfate, epoxy resin and paraphenylenediamine. On April 8, 2004, Dr. Hardin wrote Ann Ginnevan, R.N., of Dimensions in Health Care, Inc., that at Ginnevan’s request, Claimant may be released back to work “so long as you are aware that contact with epoxy resin, reacting vapor, or paraphenylenediamine will cause an acute flare [up] of her allergic contact dermatitis.”

Dr. Hardin on May 2 and 13, 2005 wrote Ginnevan again that he would release Claimant back to work, provided that she is able to avoid contact with epoxy resin, vapors from reacting epoxy resin, and paraphenylenediamine. He stated that contact with these substances would cause an acute flare-up of her contact dermatitis. Dr. Hardin added that Claimant is not scheduled for any further appointment with him, and would not need any unless she had a flare-up. However, he wrote Ginnevan on July 12, 2005 that on June 23, Claimant saw him because of a flare-up of her dermatitis. He stated that Claimant told him that the flare-up occurred after she was returned to the blacking station. He repeated his instructions of May 13 regarding what substances Claimant must avoid. He prescribed

Lidex cream. He wrote Ginnevan on July 12, 2005 that Claimant did not show up for her appointment. Dr. Hardin opined that if the cream cleared up the rash and if she had no further flare-ups, he did not need to see her. Her last office visit was on July 25, 2005. On August 2, 2005, he wrote that she could return to work at Epoxyn if she had no exposure to epoxy resin and avoided paraphenylenediamine, epoxy resin or dust, and vapor from reacting epoxy. He added that these conditions are permanent.

Records-Non-medical

Non-medical records that comprise Respondents' Exhibit 2 include her application for unemployment benefits dated August 1, 2005, her answers to Respondents' interrogatories and document production requests, and a Form W wage statement for claimant, along with a photocopy of an adding machine tape regarding the calculation of her average weekly wage, which is a reserved issue.

Adjudication

A. Reasonable and Necessary Medical Care

Under Ark. Code Ann. § 11-9-508(a), an employer shall provide for an injured employee such medical treatment as may be necessary in connection with the injury received by the employee. *Wal-Mart Stores, Inc. v. Brown*, 82 Ark. App. 600, 120 S.W.3d 153 (2003). But employers are liable only for such treatment and services as are deemed necessary for the treatment of the claimant's injuries. *DeBoard v. Colson Co.*, 20 Ark. App. 166, 725 S.W.2d 857 (1987). The claimant must prove by a preponderance of the evidence that medical treatment is reasonable and necessary for the treatment of a compensable injury. *Brown, supra*; *Geo Specialty Chem. v. Clingan*, 69 Ark. App. 369, 13 S.W.3d 218 (2000). What constitutes reasonable and necessary medical treatment is a question of fact

for the Commission. *White Consolidated Indus. v. Galloway*, 74 Ark. App. 13, 45 S.W.3d 396 (2001); *Wackenhut Corp. v. Jones*, 73 Ark. App. 158, 40 S.W.3d 333 (2001).

As the parties stipulated, and as the evidence showed, Claimant sustained a compensable injury in the form of contact or allergic dermatitis due to epoxy resin or dust. The rash that she developed spread to her hands, forearms, ears and face. Her hands became red and swollen, and the skin was peeling from her fingers. Treatment by over-the-counter medications such as Benadryl did not work when she used them prior to seeing a physician, and they did not help her when she resorted to them after her prescription cream ran out. Claimant began treating with Dr. Burnett at the close of 2004, months after the onset of her symptoms in June 2004, and saw Dr. Hardin thereafter. Dr. Hardin in May 2005 released Claimant to return to work. But he repeatedly stated that he would no longer need to see her unless she had a flare-up. She did return to him on June 23, 2005, following a flare-up, which occurred after she was returned to the blacking station at Respondent Epoxyn. She was treated with Lidex cream. She has also been treated by topical steroids and steroid dose paks. Claimant did not show up for her July 12, 2005 follow-up appointment, and Dr. Hardin last saw her on July 25, 2005. While he could not say so within a reasonable degree of medical certainty, given the elapsed time since her last visit, Dr. Hardin nonetheless predicted that Claimant would require further treatment. He also thought it improbable that she would make a full and complete recovery. While Claimant denied that household chemicals bothered her, Dr. Hardin stated that her exposure to these everyday substances, along with shampoo and fruit juice, could lead to a recurrence of the dermatitis because the epoxy exposure caused a long-term impairment of the barrier function of her skin. Dr. Hardin assigned Claimant a fifteen percent (15%)

rating under the AMA Guides based on her having a Class 2 skin disorder. For those falling under this class, “intermittent to constant treatment may be required.”

Claimant testified, and the evidence shows, that she is in present need of medical treatment. The rash has returned to her left arm. This is distinct from the benign bumps due to her Neurofibromatosis. Over-the-counter medication has not been effective. She has run out of her prescription cream. “Medical treatments which are required so as to stabilize or maintain an injured worker are the responsibility of the employer.” *Artex Hydroponics, Inc. v. Pippin*, 8 Ark. App. 200, 649 S.W.2d 845 (1983).

Based on the foregoing, I find that Claimant is entitled to reasonable and necessary medical treatment.

B. Impairment Rating

Claimant has alleged that she is entitled to permanent partial disability benefits in the form of the fifteen percent (15%) rating Dr. Hardin gave her. In order to be entitled to such benefits, a claimant must prove that the compensable injury, either alone or in combination with the preexisting condition or the natural process of aging, is the major cause of the permanent impairment, Ark. Code Ann. §11-9-102(4)(F)(ii)(a)-(b) & (14) (Repl. 2002); that the impairment rating is established by objective and measurable physical or mental findings, *Id.* § 11-9-704(c)(1)(B); that any medical opinion is stated within a reasonable degree of medical certainty, *Id.* § 11-9-102(16); and that the AMERICAN MEDICAL ASSOCIATION, GUIDES TO THE EVALUATION OF PERMANENT IMPAIRMENT (4th ed. 1993)(hereinafter “AMA Guides”) were used in determining the rating, *Id.* § 11-9-522(g); AWCC R. 099.34. See *Le v. Simmons Foods, Inc.*, 2004 AWCC 127, Claim No. E815277 (Full Commission Opinion filed July 19, 2004).

As set out above, Dr. Hardin assessed a fifteen percent (15%) impairment, based on his finding that Claimant's condition placed her under Class 2 in Table 2, page 280, of the AMA Guides. This class, which has an impairment range of ten percent (10%) to 24 percent (24%), has the following prerequisites:

- (1) Signs and symptoms of skin disorder are present or intermittently present;
- (2) There is a limitation in the performance of some of the activities of daily living;
- (3) Intermittent to constant treatment may be required.

The evidence adduced at the hearing clearly shows that Claimant's compensable injury is the major cause of her disability. As stated above, "[a]ny determination of the existence or extent of physical impairment shall be supported by objective and measurable physical or mental findings." Ark. Code Ann. § 11-9-704(c)(1)(B). Objective findings are "those findings which cannot come under the voluntary control of the patient." *Id.* § 11-9-102(16)(A)(1). Dr. Hardin had ample objective findings in the forms of Claimant's rashes and the results of the patch tests, which showed significant reactions to epoxy resin and paraphenylendiamine.

As for his opinions being stated within a reasonable degree medical certainty, it is true that the following exchanges occurred at Dr. Hardin's deposition with regard to the three elements of Class 2 impairment:

- Q. Okay. Given the fact, I think you stated this when [Claimant's counsel] was talking to you, but given the fact that you haven't seen Ms. Chuk or Ms. Plauck since '05, there is really no way for you to say within a reasonable degree of medical certainty that they are going to require future treatment, is there?
- A. That is correct.

...

Q. Okay. With regard to this Class 2 category that we're looking at, signs and symptoms of skin disorder are present or intermittently present. We've established that we don't know if Ms. Plauck or Ms. Chuk qualify for that particular requirement.

A. Having not seen them, I don't know what happened after I saw them.

Q. Okay.

A. It's the probability is that they have ongoing problems. In at least one case, finances, you know, prevented them seeking further treatment.

Q. Okay. But you don't know for certain whether they had continuing flare-ups or intermittent problems with dermatitis after they last saw you?

A. That is correct.

Q. Okay. Again, with both of the women, Ms. Chuk and Ms. Plauck, as far as limitation in the performance of activities of daily living, do you have any independent knowledge whether either one of these women have any limitations in their daily life, having not seen them since the summer of '05?

A. I do not.

Dr. Hardin's answer above regarding the third element, the need for treatment, is not dispositive. Class 2 does not mandate a *certainty* of future treatment, but merely states that such treatment *may* be required. And Dr. Hardin was clear in the latter, applicable, assessment:

Q. And the same for intermittent to constant treatment, we've established you haven't seen them since '05, so you're not aware of whether or not they're receiving treatment?

A. Assigning a disability is making a prediction. That was my prediction, that it is likely that they will.

Q. Okay. But you don't know one way or the other?

A. But I do not know for sure.

On this basis, I find that Dr. Hardin established the third element within a reasonable degree of medical certainty. And as shown above, I found under the first issue that Claimant is in fact in need of further treatment.

As for the other two elements, Dr. Hardin's testimony showed that while he did not find them within a reasonable degree of medical certainty, he predicted that they would be met. He was correct. The hearing evidence clearly established that the signs and symptoms of Claimant's skin disorder are present or are intermittently present—she had a rash at the hearing. However, the evidence did not show that there is limitation in the performance of some of the activities of daily living. At most, Claimant is hampered in only a few activities of daily living, and exposure to certain chemicals—those that Dr. Hardin has instructed her to avoid—might increase her limitation temporarily. Hence, Claimant does not meet all of the requirements for a Class 2 impairment.

The Commission may determine its own impairment rating under the AMA Guides, rather than simply assessing the validity of the ratings that have been assigned. *Avaya v. Bryant*, 82 Ark. App. 273, 105 S.W.3d 811 (2003). Class 1, which has an impairment range of one percent (1%) to nine percent (9%), has the following prerequisites:

- (1) Signs and symptoms of skin disorder are present or only intermittently present;
- (2) There is no limitation or limitation in the performance of *few* activities of daily living, although exposure to certain chemical or physical agents might increase limitation temporarily;
- (3) No treatment or intermittent treatment is required.

After reviewing the evidence in the record, I find that Claimant has sustained a Class 1 impairment under Table 2, page 280 of the AMA Guides, and that she is entitled to a nine percent (9%) impairment rating thereunder to the body as a whole.

CONCLUSION AND AWARD

Claimant has proven by a preponderance of the evidence that she is entitled to reasonable and necessary medical treatment, and that she is entitled to a nine percent (9%) impairment rating to the body as a whole.

IT IS SO ORDERED.

Hon. O. Milton Fine II
Administrative Law Judge