

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F507639

DANIEL MCMILLION	CLAIMANT
PHARMERICA, INC.	RESPONDENT
HARTFORD INS. CO. OF THE MIDWEST INSURANCE CARRIER	RESPONDENT

OPINION FILED JANUARY 5, 2007

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON in Springdale, Washington County, Arkansas.

Claimant represented by EVELYN BROOKS, Attorney, Fayetteville, Arkansas.

Respondents represented by MICHAEL RYBURN, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on September 11, 2006, in Springdale, Arkansas, but due to the medical emergency of one of the witnesses the case had to be continued until October 12, 2006. A pre-hearing order was entered on October 31, 2005.

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.

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

1. Compensability of the claimant's injuries due to carbon monoxide poisoning and mold.

2. Related medical.

In regard to the foregoing issues the claimant contends that she was injured on June 8, 2005. He has had injuries to her eyes, nose, throat, lungs and brain due to exposure to carbon monoxide and nitrogen dioxide. Prior to testimony, the claimant's attorney responded to the respondents' attorney's restatement of his contentions. See transcript received October 17, 2006.

In regard to the foregoing issues the respondents contend that the claimant did not miss enough time from work to qualify for TTD. He was not injured in the course and scope of her employment. There are no objective medical findings. There is no medical opinion with any degree of certainty regarding causation. Since the claimant did not sustain a compensable injury, he is not entitled to a change of physician. The claimant has to prove a compensable injury to get any benefit. The respondents restated their contentions at the hearing. See transcript received October 17, 2006.

The documentary evidence submitted in this matter consists of the Commission's pre-hearing order marked Commission's Exhibit No. 1. The claimant submitted documentary evidence marked Claimant's Exhibit No. 1 and additional evidence marked Claimant's Exhibit No. 2. All these exhibits were admitted without objection.

DISCUSSION

Amanda Johnson testified that she had been employed with the respondent and began working with them on September 27, 2004, and ended her employment with them on February 28, 2006. Ms. Johnson testified that she is a pharmacist. Ms. Johnson testified that the

respondent's business did not sell drugs to walk-in clients but furnished medications to the various nursing homes. Ms. Johnson testified that their building did not look like a pharmacy and when you would enter the building, there was a thirty-foot hallway and at the end of the hallway was where the pharmacist sat. Ms. Johnson testified that in the pharmacist's area was where they input information by the different pharmacists. Ms. Johnson testified that there was a door which was kept locked which went into a separate facility where the technicians worked. Ms. Johnson explained that in this separate facility which was approximately a thousand square feet there was a divided section which contained their narcotics, a separate room for their IVs and then in the very back was where the technicians worked. Ms. Johnson testified that off of the technicians area there was another door that was kept locked which went into a storage area that housed the water heater and the air-conditioning units. Ms. Johnson testified that there was a wall with a door that separated the main room from the storage area. Ms. Johnson testified that she was into the larger room every day in order to make IVs as well as to do her narcotics and to check on the technician's work. Ms. Johnson testified that on June 8, 2005, she was the pharmacist in charge of the facility. This witness stated that when she got to work the first thing she said when she got in the building was "it stinks in here." Ms. Johnson testified that there was a very very bad odor in the building. Ms. Johnson testified that all the employees were there and a few minutes later they began coming to her telling her that

they did not feel good and that their head hurt. Ms. Johnson testified that she noticed that she had begun coughing and her eyes had started watering but they all stayed because there was an order which needed to go out by 10:00 to a nursing home. Ms. Johnson testified that about an hour later she became very concerned because the relief pharmacist, who is rarely there, began bleeding from the nose. This witness testified that she then called her boss, Chuck McCauley, to report what was going on. Ms. Johnson testified that she told Mr. McCauley that something was not right that all the employees were complaining including the relief pharmacist and that she herself did not feel right. This witness testified that Mr. McCauley said that he would call her back but he never did. Ms. Johnson testified that after about an hour everyone was worse, some were shaking and that her pupils had dilated so much you could not see any of the color in her eyes. Ms. Johnson testified that she called Brian Smith who was the other pharmacist who was on vacation to see if he could get Mr. McCauley to respond. Ms. Johnson testified that Mr. McCauley did call back and instructed her to call the fire department which she did. Ms. Johnson testified that it took the fire department approximately twenty minutes to get there and during this period of time she opened the doors to get a little ventilation and that the different employees would step outside for fresh air at different times because they were still in need of getting the medications out to the nursing home. Ms. Johnson testified that their boss instructed them to get the orders out so they all went back in and worked for

another thirty to forty-five minutes until the fire department arrived then everyone was instructed to get out of the building except for her. Ms. Johnson explained that by law she cannot leave the building with other people in the building who are not pharmacists.

Ms. Johnson testified that she observed the other employees reporting that they were light headed, they were coughing, their eyes were watering and they were shaking even though they were not cold because it was in the summer. Ms. Johnson recalls that a couple of the employees' noses started bleeding, their voices were raspy and they were short of breath. Ms. Johnson testified that, "It was like someone was taking your breath away."

Ms. Johnson testified that they have had ongoing problems with the hot water heater in that it was not draining properly. Ms. Johnson testified that the water would pile up on the floor and the carpet got soaked several times. Ms. Johnson testified that this was reported to the respondent and that they were instructed to call the building supervisor which they did. Ms. Johnson testified that she remembers the last time that this problem was called in and that an air-conditioning man was sent out. Ms. Johnson testified that the service man looked around for a little bit, did not fix anything and said he would be back in a week but he never showed back up. Ms. Johnson testified that the problems with the hot water heater had been in existence since the day she went to work for the respondent.

Ms. Johnson testified that she did go to the emergency room at St. Mary's Hospital and after waiting two hours she was never seen so she went home. Ms. Johnson testified that after this incident she felt nauseous and dizzy with a slight numb headache. This witness testified that about twenty-four hours later she still had her numb headache, she had begun to have headaches so severe she was unable to get off her couch. Ms. Johnson testified that these headaches went on for months and that she got where she could not remember things. Ms. Johnson testified that after the first two weeks they would not let any of the employees back in the building so there was not an option as to whether she should go to work or not. This witness testified that when she was called back to work they were in a different building and that she did work every day. Ms. Johnson explained that they had closed the facility where they had been located and placed a mobile unit about five feet from the back door of their old building. Ms. Johnson testified that she still has migraines every day and she still has memory loss. Ms. Johnson testified that she was a very quick worker and very efficient but she found herself not as efficient. This witness testified that she could not multitask like she used to and became frustrated much easier.

Ms. Johnson testified that she was sent to see Dr. Moffitt who treated her for normal migraine headaches but none of the treatment worked. Ms. Johnson testified that then the respondents sent her to a neurologist in Little Rock. Ms. Johnson testified that besides her migraine headaches she also experienced a weight loss

of ten pounds within the first month following this incident. Ms. Johnson testified that she saw a carbon monoxide report in Dr. Moffitt's office and he went over this report with her. Ms. Johnson testified that she was in the adjoining trailer when the mechanical engineer came out and it was discovered that there was a broken seam in the back of the hot water tank. Ms. Johnson testified that she was not in the building when the levels were taken and remembered that these tests were taken approximately three weeks after June 8.

On cross examination, Ms. Johnson testified that she worked for approximately one year in the building that had that particular hot water heater. Ms. Johnson testified that her work station was further away from the hot water heater than the work stations of the technicians. Ms. Johnson testified that there is only one small wall separating the technicians from the mechanical room. Ms. Johnson agreed that this was the same hot water heater that was there when she began working for the respondent and that nothing had been done to repair it while she was there. Ms. Johnson was asked what her opinion was as to why there was such a difference on June 8 than there had been all the other days that she had been working. Ms. Johnson responded that it was her opinion that the water tank had exploded in the back and that was the reason for the problem. Ms. Johnson testified that the whole back of the hot water heater was ripped open and there was about a foot of water underneath the water heater when the fire fighters got there. Ms. Johnson testified that she does not know whether the level of

carbon monoxide in the room was higher on June 8, 2005, than it was on June 8, 2004. Ms. Johnson testified that on June 8, 2005, they all began work at 8:30 and that by 10:30 they were beginning to rotate in and out of the building. Ms. Johnson testified that they did have the front door open for ventilation. Ms. Johnson testified that the odor she noticed when she first came into work on June 8 was an odor that she had never noticed before but would describe it as smelling like an old gym bag that had been in a very hot car for a month. Ms. Johnson agreed that carbon monoxide is odorless. Ms. Johnson testified that six months after this incident her headaches went away. Ms. Johnson testified that even though she was in the building perhaps more than some of the other employees on June 8, 2005, her office was up front and not as close to the hot water heater. Ms. Johnson testified that in her opinion she did not have any more exposure than any of the other employees.

Brian Keith Smith testified that he was a pharmacist and was the manager at the Rogers location. Mr. Smith testified that he began working for the respondent in October 2004 and worked for them until December 26, 2005. Mr. Smith testified that he was aware that there were problems with a leak in the hot water heater after he had been there two to three months. Mr. Smith testified that he came in one day and there was water on the floor so the building manager was called and supposedly this leak was fixed. Mr. Smith testified that he was unaware of any leak after it was fixed. This witness testified that he was not at the site on June 8, 2005, because he was on vacation. Mr. Smith testified that he

was called and told that some of the employees had gone to the emergency room and when he got there it was his memory that Amanda Johnson was still there as well as the relief pharmacist. Mr. Smith testified that when he arrived Amanda Johnson handed him a folder of orders as to what they had been doing and after they left he went in to make sure that everything was taken care of. Mr. Smith testified that he was in the building approximately one hour to make sure that everything was taken care of on June 8, 2005. This witness testified that he continued to work in this building every day for the next two weeks noting that none of the other employees ever went back into the building. Mr. Smith testified that the respondent brought in people specifically remembering a man named Ray from St. Louis from Global Labs who did testing. Mr. Smith remembers that then EGIS was brought in to do clean up of the bottles and that he, Mr. Smith, was in labeling and keeping track because a pharmacist has to be on site with the medicines when anyone else is on site. Mr. Smith testified that after June 8 he did see the hot water heater and noticed that the seam at the back had blown out in the middle. Mr. Smith testified that after they moved into the trailer, the three techs, Seratt, McMillion and Cortez eventually returned to work over a period of time. Mr. Smith testified that he noticed a difference in their performance in that their error rate went up tremendously and that he found himself having to double check their work more often. Mr. Smith testified that all three of these employees missed work for doctor's appointments and that there were times when he had to send

them home because they were so fatigued or disoriented. Mr. Smith testified that these three employees error rate went up noticeably and things they would do on a routine basis without error now mistakes were found such as sending medications to the wrong pharmacy or inputting the medications to the wrong patient. Mr. Smith testified that in order to address the fatigue problem he bought a hammock and put up in one of the rooms so that each of these employees could lay down for a while and then go back to work. Mr. Smith testified that during this period of time they were only inputting orders not actually filling prescriptions because their inventory had been locked down for fear of mold. Mr. Smith explained that the actual prescriptions were being filled out of the Little Rock office and, that at one point, the respondent wanted the technicians, Marlene Seratt, Daniel McMillion and Aurora Cortez, to come to Little Rock and work filling prescriptions. Mr. Smith stated that he did not think that these three employees could function in the Little Rock atmosphere. Mr. Smith stated that, "Getting into work and having them healthy even long enough to work a day was difficult."

On cross examination, Mr. Smith testified that when he came to the respondent's facility on June 8, 2005, most of the people were gone. The claimant testified that he was told that there was a water spot on the floor and he witnessed a ten foot long and approximately three to four feet wide spot on the carpet. This witness remembers that everything was unfinished explaining that it looked like people had just stopped working. Mr. Smith testified

that it was speculated by everyone that there was a mold problem and there was a moldy odor. Mr. Smith testified that before this date he had not witnessed a water spot on the floor where the techs work but was aware of a water problem in the mechanical room where the water heater sat up on a two-foot platform that was enclosed. Mr. Smith testified that he was not aware of the split in the hot water heater prior to June 8 but was aware that there was a drip from the plumbing or the pipes that connected to the hot water heater. Mr. Smith testified that there was a plastic tub that was underneath the drip and once new pipping was put in that leak stopped. Mr. Smith testified that he was sicker when he worked in that building than he has ever been in his life. This witness testified that he had never had any health problems and that after he began work for the respondent in that building he was constantly having breathing and sinus problems and feeling under the weather. Mr. Smith testified that for the two weeks that he was in the building when the testing was going on after June 8 there was a period of about thirty to forty-five days that he coughed every single day and that he even went to see a doctor for this cough. Mr. Smith testified that prior to June 8, 2005, there was no pattern from the other employees of missing work due to illness. Mr. Smith testified that once he was out of the environment where he had been working for the respondent, he did get better over time and his breathing got better. Mr. Smith testified that he has been told that he has some allergies but nothing that he takes medication for. This witness testified that the only problem that

he can relate back to his exposure from June 8 forward is that his memory is not the same as it was before. Mr. Smith testified that he worked with Ms. Seratt, Mr. McMillion and Ms. Cortez from June 8, 2005, until December 26, 2005. Mr. Smith testified that they were dealing with the problem every day such as going to the doctor and sharing information as far as symptoms were concerned.

On redirect examination, Mr. Smith testified that prior to June 8, 2005, he spent most of his time in the input room not in the room with the technicians. Mr. Smith stated that around 3:30 or 4:00 in the afternoon he would go into the room with the technicians and start checking orders. Mr. Smith testified that he was in the room with the technicians a couple of hours a day, noting that most of his time was either in his office or in the input area.

On recross examination, Mr. Smith testified that, to the best of his memory, the respondent's building had three separate air-conditioning units. Mr. Smith remembered that one unit serviced the input area and his office as well as the conference room, another one was specifically for the IV room and the other one was for the large back room and the pharmacy area.

The Claimant testified that he was twenty-nine years old and went to work for the respondent around March or April 2005. The claimant testified that he was hired as a pharmacy technician and it was his responsibility to fill prescriptions after they were input in the computer and he did inputting as well. This witness testified that he did small things with the IV room, made contact

with the various nursing homes and took refills. The claimant testified that most of his working day for the respondent was spent at the press, explaining that the nursing home's medications were sealed in plastic so that they could be punched out for convenience. The claimant testified that his station was in the back of the building right in the middle of the other girls and toward the wall where the utility room is. The claimant testified that before he went to work for the respondent, he had allergies as well as some tension headaches. The claimant testified that before he went to work for the respondent he might have headaches biyearly and particularly around the holidays attributing it to stress or something in the air. The claimant testified that he worked on an average of forty-five hours a week for the respondent. The claimant testified that there was a compressor that operated their hydraulic presses and that he was told by his supervisor, Brian Smith, to go drain the compressor because it collected condensation. The claimant testified that he went into the utility room a few days before June 8, 2005, and took the compressor outside and drained it of its water and took it apart. The claimant testified that he noticed that there was a wooden box that the compressor sat on and that it looked all wet and moldy. The claimant testified that he did not touch it because he really did not want to because it was kind of yucky. The claimant testified that the floor looked like it had a calcium stain on it as if it had been wet at one time but had dried up. The claimant testified that after he began working for the respondent but before June 8 he did experience fatigue as

well as having more headaches which he attributed to working so much. The claimant testified that his headaches would go away when he would leave the respondent's business. The claimant testified that on June 8, 2005, he got to work about 8:00 and went to his station. This witness testified that after about twenty or thirty minutes his eyes started burning. The claimant testified that he thought that perhaps he had touched something that set off an allergic type reaction and he went to Amanda and asked if he could get some eye drops. The claimant testified that after another fifteen or twenty minutes he began to make mistakes which he was not accustomed to making and at one point could not remember how to do his job. The claimant remembers that he could not remember what sequence to do things in, he started filling empty bottles, mislabeling and just feeling very scramble brained. The claimant testified that he complained to Amanda Johnson and told her that he was going to take an early lunch because he was not feeling well and something was not right and he wanted to go home. The claimant testified that Amanda told him that they were calling the fire department and he went ahead and took his early lunch. The claimant testified that besides his eyes being irritated and experiencing confusion, he was shaking, he had an onset of headache and he experienced a nose bleed. The claimant testified that he left the respondent's office to go directly to see Dr. Robert Hull but when he got to Dr. Hull's office he was met at the door and immediately told to go the emergency room so he left and went to St. Mary's Hospital. This witness testified that at the ER he was

given a shot for his headache, his blood sugar was checked, his oxygen level was checked and they had him do some breathing exercises as well as describe his pain because they were concerned about his heart rate. The claimant testified that he had to call someone to come get him since he could not drive. This witness testified that he continued to work for the respondent although he did not work at all for the next week to a week and a half and eventually he was transferred to work in Little Rock for the respondent. This witness explained that they would drive down on Sunday evening and would work from 7:00 until 7:00 or later and then go back to their hotel. The claimant testified that there were three or four days when he had to go back to the hotel early because he was not feeling well, vomiting as well as having headaches and shaking. The claimant testified that he worked for the respondent until around New Years Eve of 2005. The claimant estimated that he missed approximately 30 percent of his working days due to his problems and these were over and above the days which he missed for doctor's visits. The claimant testified that after the incident in June 2005, he had problems focusing on things, noting that he made errors which he had never made before. This witness testified that after he left the employment of the respondent he began working for Harps in their pharmacy. The claimant testified that he is currently working approximately thirty hours each week. The claimant testified that even with a reduced work week, he still is very tired and gets shaky at the end of the week as well as has headaches although not as often and

severe as they were earlier. The claimant testified that he will start making more errors by the end of the week, therefore, he limits his time to forty hours. The claimant testified that he was seen by Dr. Johnson, a neuro-psychiatrist or psychologist, in Little Rock. The claimant stated that he was seen by Dr. Johnson seven hours the first day and four or five hours the second day. Ms. McMillion described Dr. Johnson's office as a home office that was full of stuffed animals and dollies sort of like a big antique store and kind of strange. The claimant testified that in the doctor's office, it was like a living area with all kinds of weird stuff. This witness testified that there were things like warlocks and little crystals as well as all kinds of different medieval looking things like witches and a bunch of diplomas and stuff on her wall. The claimant testified that he recalls seeing a certificate certifying Dr. Johnson in sorcery.

On cross examination, The claimant testified that the only objective medical findings that he has are shaking and some headaches. This witness testified that he also still has memory problems and has not been seen by a memory specialist. The claimant testified that currently he is being treated by Dr. Petty. The claimant agreed that he has fairly severe allergies, noting that he was allergic to grasses and trees and other things that might be happening in the spring and summer. The claimant testified that he had had a steroid shot probably a week before June 8, 2005, so he had his allergies under control on June 8, 2005. The claimant agreed that initially he thought he had been

exposed to mold but later learned that was not the offending agent. The claimant testified that he is a cigarette smoker and was aware that cigarette smoking is the leading cause of carbon monoxide in his system. The claimant agreed that the test he took to determine the level of carbon monoxide in his blood as well as an MRI of his brain were both normal and that he is also gone through a neurological and a neuropsychological evaluation. The claimant testified that he started working for the respondent in April 2005. The claimant was asked what he considered attributed to the onset of his symptoms on June 8, 2005, and The claimant responded, "I think that something happened to the hot water heater that night before we came in---something drastic, not subtle." The claimant testified that on June 8, 2005, he was exposed to something three to four hours.

On redirect examination, The claimant testified that he smokes approximately a pack of cigarettes a week and that is approximately what he was smoking prior to June 8, 2005. The claimant was asked if he had ever gone into the mechanical room before June 8, 2005, and experienced problems? The claimant indicated that yes he had had occasion to go into the mechanical room and when he did it just did not feel right. The claimant testified that he would feel kind of light headed and kind of dizzy when he would go back in the mechanical room and he just did not feel good.

Aurora Cortez testified that she was 41 years old and had been working for the respondent since July 19, 2004. Ms. Cortez testified that when she began work Marlene Seratt was also working.

Ms. Cortez testified that she was hired to pack pills and that her station was in the middle where she could see the pharmacist coming in and the door to the narcotics room. Ms. Cortez testified that she worked in the big main room where all the technicians worked. Ms. Cortez testified that when she was first hired she was told that one of her jobs would be to empty the bin under the hot water heater. Ms. Cortez testified that she emptied this bin every morning and every evening. Ms. Cortez testified that this was not a part of the hot water heater but something someone had put there to catch the water. Ms. Cortez testified that she did this job until Brian Smith came to work because she remembers telling him that it made her nervous to go back into that room for fear of getting closed up in the mechanical room. Ms. Cortez testified that prior to working for the respondent she did not have any health problems nor was she taking any medications. Ms. Cortez testified that she did not have any health problems from the time she began working for the respondent until June 8, 2005. Ms. Cortez testified that she is deaf in one ear but this was not as a result of her work nor does she require medication or treatment for her ear. Ms. Cortez testified that after Brian Smith got there he had the water heater fixed and they no longer had to empty the bin. This witness testified that on June 8, 2005, she got to work at 8:00 and they saw a large puddle of water. Ms. Cortez testified that Amanda was taking care of this water problem. Ms. Cortez testified that they began to work filling orders and started feeling sick. Ms. Cortez testified that she started trembling and

sweating so she moved to another work area thinking that maybe she was just a little on edge and a change would improve her situation. Ms. Cortez testified that after about twenty minutes she was walking toward Mignon and remembers looking at Dan McMillion and he looked terrible. Ms. Cortez testified that she said to Mignon that she did not feel good and that Mignon told her that she did not look good at all and then they looked at Dan McMillion and he did not look good either. Ms. Cortez testified that Mr. McMillion was trembling and his eyes were red. Ms. Cortez testified that she was trying to get a hold of Mr. McMillion's hand so she could tell him to come on and go but she could not get a hold of him. Ms. Cortez testified that she did not know where he was, she could see him but she could not get to him. Ms. Cortez agreed that she was having problems with confusion. Ms. Cortez testified that they did not complain to Amanda during the morning but that she did look up and see Amanda coming in and that her face was very red. Ms. Cortez remembers that Amanda told them to come on they needed to get out. Ms. Cortez testified that the respondents initially told her to go to see Dr. Hull but then she received word that Dr. Hull did not want to see anyone that was sick in his office so she went to St. Mary's Hospital to the emergency room.

At this point in the testimony, Ms. Cortez appeared to have a medical emergency for which the paramedics were called. The hearing was stopped at this point and arrangements were made to take Ms. Cortez's testimony by deposition.

Ms. Cortez testified by way of deposition and still on direct examination. Ms. Cortez testified that she is being treated by Dr. Corwin Petty for headaches and her back burning. Ms. Cortez testified that everything is wrong with her and she just wants to sleep all day, she cannot do anything. Ms. Cortez testified that the first symptom that she noticed after June 8, 2005, were her headaches. Ms. Cortez testified that the respondents gave her paid time off for two weeks following June 8, 2005, and then called her back to work in a trailer. Ms. Cortez testified that she is still working for the respondent but when she had a seizure in April she was told that she would have to get a medical leave and is currently on short term disability. Ms. Cortez testified that she has not worked since April. Ms. Cortez testified that since her first seizure in April 2006 she has seizures every day and that she did not have any seizures before June 8, 2005. Ms. Cortez was asked about the burning in her back and this witness described it as a horrific pain that goes all over her back. Ms. Cortez testified that it is like if you touch her back it just starts hurting real bad. Ms. Cortez testified that this happens once in a while but did not happen before June 8. Ms. Cortez testified that when she returned to work after being off two weeks after June 8, 2005, she could not concentrate and she was forgetting quite a bit. This witness testified that she could not multitask very well. Ms. Cortez testified that she was making lots of mistakes which worried her greatly and she was having headaches. Ms. Cortez testified that Dr. Petty has given her medications for her

headaches. Ms. Cortez testified that when she returned to work, Brian brought a cot and he would let her take breaks and lay down when he knew that she just could not do the work. Ms. Cortez testified that sometimes she would sleep for an hour. Ms. Cortez testified that she was under extra pressure and stress due to her grandmother being in a nursing home and she was afraid that her mistakes with the medications might kill someone else's grandmother who was in a nursing home. Ms. Cortez testified that currently she is taking medication called Topamax which is for her headaches and seizures. Ms. Cortez testified that she is also taking Phenobarb and Nadolol which are for seizures and she also takes an anti-depressant.

On cross examination, Ms. Cortez was asked questions concerning a car wreck she was involved in which she thinks was just prior to June 8, 2005. Ms. Cortez testified that one of her supervisors, Bettie, told her that the problems which she was having were problems as a result of her car wreck. Ms. Cortez testified that she did not have any problems after her car wreck. Ms. Cortez testified that she smokes about a pack of cigarettes a month. This witness testified that she did not have a history of headaches prior to June 8, 2005. Ms. Cortez testified that the first she ever heard that she might have been exposed to mold at work was from the fire department. Ms. Cortez agreed that the only thing different on June 8, 2005, when she got to work that morning was that there was water on the floor and that she was totally confused. Ms. Cortez testified that she had worked in this

building for approximately a year and a half. Ms. Cortez testified that she attributes her symptoms to carbon monoxide once she learned that there was no mold exposure. This witness testified that the company doctor did release her to return to work which she did but in a different facility. Ms. Cortez agreed that her only exposure was June 8, 2005, and that she was only in the building till the fire department got there. This witness agreed that the new building where she went back to work did not have any problems with mold or carbon monoxide. Ms. Cortez testified that after she went back to work and worked for a period of time, she was transferred to Little Rock but cannot remember how long she worked in Little Rock. This witness testified that she had her first seizure sometime in April 2006 and that she was at work when this seizure occurred. Ms. Cortez testified that there was nothing unusual that day to make her have a seizure and that she has not been checked out by a doctor due to her seizures. Ms. Cortez testified that since June 8, 2005, besides having headaches and back pain she has a lot wrong with her. This witness testified that she is very slow, cannot read and cannot write but has not been checked by a doctor because she cannot afford one. Ms. Cortez agreed that the respondent paid for her to undergo several tests, one of them being a carboxyhemoglobin test which is a test to measure carbon monoxide in the blood. Ms. Cortez testified that she understands that this blood test as well as the MRI of her brain were both normal. Ms. Cortez testified that everything is wrong with her but that she has no proof because how can she prove

it. This witness stated that, "I can only tell you that I am sick, and I wasn't sick before." Ms. Cortez agreed that her diagnosis by Dr. Petty of her having anxiety syndrome was brought on by her having to leave her children at home when she went to work in Little Rock. Ms. Cortez agreed that she worked part time in Rogers and part time in Little Rock. Ms. Cortez testified that she has not worked since her seizure because the respondent will not allow her to and she has tried to apply for short term disability, long term disability and social security disability. Ms. Cortez agreed that she is not able to work at this time because she cannot find a doctor who can find a medication to correct her seizures. Ms. Cortez again testified that she has seizures just about every day but has not physically hurt herself as a result of these seizures.

Ms. Seratt testified that she was forty-two years old and began working for the respondent on August 17, 1998. Ms. Seratt testified that she initially worked as a delivery driver for the respondent and then became a technician. Ms. Seratt testified that she became a tech in 1999 and has worked her entire time for the respondent in the same building in the back room where the techs work. Ms. Seratt testified that she was familiar with the hot water heater in that building and was aware that it had a problem with leaking prior to June 8, 2005. Ms. Seratt testified that the various technicians took turns emptying out a little plastic water catcher and that this problem had been going on ever since she began working for the respondent. Ms. Seratt testified that her hours were from 8:00 a.m. to 5:00 p.m. and that she worked Monday

through Friday and every other Saturday for the respondent. Ms. Seratt testified that prior to going to work for the respondent in 1998, she was not aware of having any health problems. Ms. Seratt testified that prior to June 8, 2005, and after she went to work for the respondent, she ended up having sinus trouble. This witness also remembers that she did miss work between June and October 2004, noting that she had a lot of pain in her body, in her joints and muscles so she was taken off work to undergo tests. Ms. Seratt testified that when she arrived at work on June 8, 2005, at 8:00 in the morning there was a huge water spot in the area close to where she worked. Ms. Seratt testified that the night before she left she had noticed a little water spot on the carpet. This witness testified that there had been an additional piece of carpet laying on the floor for the techs to work and walk on and that she and Amanda dragged this piece of carpet outside. Ms. Seratt testified that there was just a huge big old puddle of water and it smelled horrible. Ms. Seratt testified that this problem had happened before and that they had never cleaned the carpets, noting further that it stank. Ms. Seratt testified that she has complained to management prior to June 8 about the leaking water problem. Ms. Seratt testified that she began working and started getting a headache the same as she always did and she just assumed it was from her computer. Ms. Seratt remembers that as the day went on her problems kept getting worse and then her nose and throat started burning and she ended up putting on a mask to try and keep whatever was going on from getting worse. Ms. Seratt

testified that all the techs put on masks to try to prevent whatever was going on from getting into their nose, throat and eyes. Ms. Seratt testified that this was reported to Amanda Johnson. Ms. Seratt testified that Ms. Johnson opened the doors and started having the techs take turns going outside for thirty minutes at a time. Ms. Seratt opined that it was around 9:00 or 10:00 when they started rotating in and out of the building. Ms. Seratt testified that she was having a hard time concentrating and her hands got to shaking so bad she was having a hard time holding onto the bottles. Ms. Seratt testified that all three of the techs including herself were shaking. Ms. Seratt testified that she drove herself to the emergency room and on the way she stopped right in the middle of the highway and she did not even realize what she had done. Ms. Seratt testified that it was like her mind was not working. Ms. Seratt stated that things were in there, people were asking her questions and she would be trying to answer but it just would not come out right. Ms. Seratt testified that in the emergency room the doctor told her to take Claritin, drink lots of water and go home. This witness testified that no tests were run at the ER. Ms. Seratt testified that at the ER she was shaking, her eyes, nose and throat were burning and that her voice had changed in that it was real raspy.

Ms. Seratt agreed that she was seen by Dr. David Brown, a neurologist who ultimately referred her to a neuro-toxicologist. Ms. Seratt testified that she was not able to see the neuro-toxicologist but was seen by a Dr. Johnson in Little Rock who she

thought was a neuro-psychiatrist. Ms. Seratt testified that Dr. Johnson's office was smelly and dirty and in her office she had crystal balls, wicked looking dolls as well as normal dolls and that she noticed a certificate of sorcery hanging on her wall. Ms. Seratt testified that she quit working for the respondent at the end of January of 2006. Ms. Seratt testified that between June 8 and when she stopped working for the respondent, she continued to have memory problems as well as having problems concentrating while working. Ms. Seratt testified that she no longer can multitask like she used to and she can only concentrate on one thing at a time. Ms. Seratt testified that during the period of time she was working for the respondent after June 8 she did have to miss work as well as take unscheduled breaks. Ms. Seratt testified that she also had severe headaches and that she would wear a migraine patch on her forehead. Ms. Seratt testified that she also used a chap stick looking product called Head On to try and stop her pain. Ms. Seratt remembered that her vision was different in that it was a little blurry, noting that she had gotten glasses a couple of months before June 8 and they did not seem to be working much anymore. Ms. Seratt testified that she currently is not working and one of the main reasons she is not employed is because she has constant fatigue. Ms. Seratt was asked if she had other problems other than the fatigue which she attributed to the June 8 incident and the claimant replied that she had memory problems, stating that she has a hard time hanging onto things. Ms. Seratt testified that she currently is being seen by Dr. Petty.

On cross examination, Ms. Seratt agreed that she had lots of medical conditions before June 8, 2005. Ms. Seratt testified that she did not know that she had allergies and histoplasmosis until after June 8, 2005. Ms. Seratt testified that her sinusitis started after she started to work for the respondent. Ms. Seratt testified that about a month before June 8, 2005, she began having coughing spells so hard that she would throw up. Ms. Seratt testified that she was prescribed medication to address this problem as well as she took an anti-inflammatory and a sleeping pill. Ms. Seratt agreed that she had worked in the same building for the respondent for seven and a half years. Ms. Seratt testified that during this seven and a half year period she was treated by Dr. Hull for a sinus problem. Ms. Seratt testified that currently and as a result of her exposure on June 8 she is very fatigued and also has memory problems. Ms. Seratt remembered that she suffered from fatigue prior to June 8, 2005. The claimant agreed that the respondent paid for her to have an MRI of her brain, a neuropsychological evaluation, blood work and lung tests. Ms. Seratt testified that she also was given a test that measured the amount of carbon monoxide in her blood. Ms. Seratt testified that she is a cigarette smoker, smoking about a pack of cigarettes a day but agreed that in the past she has smoke up to three packs a day. Ms. Seratt testified that she understood that cigarette smoking is a cause for elevated carbon monoxide in the blood. Ms. Seratt testified that currently she is having lung problems and is on inhalers which she never was before and she is having muscle

problems for which she would like to receive medical treatment. Ms. Seratt testified that she started having asthma and allergy problems about a month before June 8, 2005, agreeing that her symptoms began to manifest themselves before anyone else experienced similar symptoms but, in her opinion, her symptoms were elevated on June 8, 2005. Ms. Seratt testified that she was being treated for fibromyalgia prior to June 8, 2005, noting that she was having pain in her muscles which the doctor diagnosed as fibromyalgia. Ms. Seratt testified that she was last seen by Dr. Petty a couple of weeks before this hearing and to her knowledge Aurora Cortez and Daniel McMillion are also being treated by Dr. Petty. Ms. Seratt agreed that she saw a doctor a couple of weeks before June 8, 2005, for several of her medical problems. Ms. Seratt testified that she needed to get refills so she had to be examined or checked over by a doctor in order to get refills on her medications. Ms. Seratt testified that she still has these medical problems and in addition she now has problems with her lungs and her sinuses and memory are really bad. Ms. Seratt testified that she had been to the doctor a month before June 8 and had been given Singular because of a suspected allergy and that after June 8, 2005, and after she had been seen by Dr. Moffitt she went to her doctor and that was when she got her first breathing treatment, noting that there was nothing wrong with her lungs before that. Ms. Seratt was asked how long she had smoked cigarettes and she responded, "Twenty years." Ms. Seratt testified that she did

undergo a functional capacity evaluation but is unaware of the results of that evaluation.

On redirect examination, Ms. Seratt testified that she began to experience fatigue several years ago because they used to work a lot without lunch. Ms. Seratt testified that she experienced fatigue before she went to work for the respondent but it got worse after she began working for the respondent and now it is really bad. Ms. Seratt testified that even after they moved into the new building, they would lay down on the carpet to rest. Ms. Seratt was asked who would lay down and she testified, "Aurora, Dan, Amanda and Brian." Ms. Seratt testified that she never did lay down at work prior to June 8.

The medical records set forth that the claimant was seen at St. Mary's hospital on June 8, 2005, and was referred to Dr. Desilva for further evaluation and treatment. The claimant was also instructed to stay out of the mold environment and medication was prescribed. The claimant was seen by Dr. Konstantin Berestnev on June 9, 2005. The doctor notes that the claimant reports that he was injured on June 4, 2005, noting that he was working on Saturday and noticed a headache and that on June 8, 2005, his headache got worse, his eyes started burning, feeling unconnected, chest congestion and shakey, all of which he contributed to his exposure at work which was thought to be mold. Dr. Berestnev writes that the claimant has the typical appearance of a patient with environmental allergies, noting that he has periorbital halos, he is pale and edematous nasopharynx with nasal drainage present.

Dr. Berestnev notes that the claimant has pain to palpitation of the maxillary sinuses. After examination, the claimant was assessed with having exposure to mold and environmental allergies with maxillary sinusitis. Dr. Berestnev recommended that the claimant continue taking the medications which his primary care physician had prescribed to drink plenty of fluids and use the moisturizing Vaseline type cream in his nose at night to prevent bleeding. The doctor released the claimant to regular duties and was advised to continue to treat his environmental allergies. Dr. Moffitt writes on June 17, 2005, that the claimant reports having a severe problem with headaches. Dr. Moffitt writes that the claimant reports that he has had a problems with headaches prior to his exposure and has had a constant headache for the past week and a half for which he had been taking Aleve and Excedrin. Dr. Moffitt writes that the claimant reports that he has a history of sinus problems and has taken a round of antibiotics but continues to have the same problems. The claimant also reports that he thinks that his headaches seem to get better when he leaves work. Dr. Moffitt gave the claimant a complete examination which proved to be normal in all fields. Dr. Moffitt notes that the claimant's sinus films were negative, his uranalysis was negative and his CBC was normal. Dr. Moffitt did order a comprehensive metabolic profile since the claimant reports that an insecticide had been sprayed on Monday. Dr. Moffitt recommended that the claimant continue to use his over the counter medications for his headaches. Dr. Edwin Whiteside writes on July 13, 2005, that he has evaluated the claimant along

with six other employees to determine if they have significant allergies. Dr. Whiteside notes that they performed a pulmonary evaluation that included spirometry on each of these patients. Dr. Whiteside writes that from the available research there is no way a patient could inhale enough mold spores to cause a toxic reaction to mold. Dr. Whiteside testified that the claimant was found to have significant allergies and he is allergic to mold but that is not his primary allergen. Dr. Whiteside notes that the claimant's spirometry was normal. Dr. Whiteside concludes that it appears to him that the difficulty that the claimant is having with his headaches and other symptoms would have to be due to another etiology other than mold. The doctor notes that, in his opinion, it appears to him that the difficulty the claimant is experiencing is probably due to exposure to carbon monoxide and/or nitrogen dioxide. Dr. Gary Moffitt writes on July 14, 2005, that when he went into the examining room the claimant was laying on the exam table curled up in a fetal position covered with a blanket, wearing sun glasses and had an emesis basin. The doctor notes that the claimant reports a severe headache, noting that he had taken some medication that morning and developed the headache as well as nausea and that he was photophobia as well. Dr. Moffitt notes that upon examination, the claimant appears to be in distress, his pupils were equal and reactive to light and he was conversant and moving all four extremities. Dr. Moffitt administered an injection of Nubain as well as Phenergan and the claimant was observed. Dr. Moffitt writes that the claimant's headaches seem to improve and in

approximately an hour he was not hurting nearly as badly and was not experiencing vomiting. Upon examination, all fields were found to be normal. Dr. Moffitt writes that since there is now a question as to carbon monoxide exposure a carboxyhemoglobin level was drawn and the doctor recommended an MRI. Dr. Moffitt notes that the claimant has an appointment with Dr. Reginald Rutherford and defers the MRI until the claimant is seen by Dr. Rutherford. Dr. Moffitt returned the claimant to work with the same restrictions. Dr. Reginald Rutherford writes on July 20, 2005, that he has seen the claimant for complaints following carbon monoxide exposure at the work place. Dr. Rutherford notes that the claimant reports a history of tension headaches, TMJ syndrome and allergies. Dr. Rutherford then goes through the claimant's various medications and treatments which he uses for these various medical conditions. Dr. Rutherford writes that the claimant reports that after he began working for the respondent, he noticed an increased in severity of his headaches as well as increasing sinus problems. The doctor notes that the claimant reports that on June 8 he and other co-workers became ill and were initially evaluated for mold exposure but subsequently a carbon monoxide leak was discovered in a defective water heater. Dr. Rutherford writes that the claimant has been checked for carboxyhemoglobin which is mildly elevated but not abnormal in light of the fact that the claimant is a smoker. Dr. Rutherford did a physical as well as a neurological examination of the claimant and both were found to be within normal limits. Dr. Rutherford writes that in light of the claimant's complaints of

tremor, arrangements were made for TSH and thyroid profile. The claimant's complaints of difficulty with balance when deprived of visual clues prompts a B12 level and his other symptoms will be addressed by a MRI of his brain. It was also recommended that the claimant be evaluated by a neuropsychologist, Dr. Judy Johnson. The claimant underwent an MRI of his brain on July 22, 2005, which was normal. Dr. Rutherford writes on September 6, 2005, that the claimant's MRI of his brain was normal, his blood work revealed normal thyroid profile and normal B12 level. The claimant's neuropsychological testing proved negative for evidence of traumatic brain injury or brain dysfunction. Dr. Rutherford notes that anxiety and depression were considered and the claimant was cautioned not to use opioid based analgesics for his headaches. Medications were prescribed for the claimant. The claimant was evaluated on August 19, 2005, by Dr. Judy Johnson, a clinical psychologist and a clinical neuropsychologist. Dr. Johnson administered several tests and as a result of these various tests found that the claimant was assessed as being motivated and reliable for cognitive tests within normal limits. Dr. Johnson notes that during the test the claimant was alert, responsive and able to understand the oral and written instructions, noting that he was oriented to time, place and person and situation and aware of current events. Dr. Johnson does note that throughout the testing the claimant engaged in multiple self critical negativistic and self defeating behaviors, ridiculing his own performance. Dr. Johnson notes that the claimant seemed unable to modify this

behavior for any length of time even after being cautioned that this would interfere with him giving his best performance. The doctor notes that several times he said he just felt like quitting the testing. Dr. Johnson writes that on the verbal section of the testing the claimant showed a relative significant strength in his ability to focus his attention on repeat numbers forward and backward. It is noted that the claimant's performance section of the test showed a relative strength in non verbal abstract reasoning and non verbal concept formation performing at an average level. Dr. Johnson writes that although the claimant has a numeric discrepancy between his verbal IQ and performance IQ of 39 points, the pattern of his responses, performance on other similar cognitive tasks and behavior observations suggest this difference is associated with extra test variables and test taking attitude rather than cognitive problems. Dr. Johnson writes that in general the pattern of the claimant's performance on memory testing is consistent with his overall cognitive skills assessment with no pattern of strengths or weaknesses. The doctor notes that the claimant was able to maintain and shift attention, alter his behavior in response to feed back regarding correct as well as incorrect responses and showed cognitive flexibility with appropriate abstract reasoning skills. It is pointed out that the claimant's performance on his TMT was excellent and above average, noting that he had no difficulty maintaining and shifting his attention and then returning to the task at hand. The doctor writes that the claimant's fine motor speed is bilaterally within

normal limits. On the claimant's language assessment, Dr. Johnson writes that he had no difficulties and that his verbal fluency and word finding was superior. The doctor writes that the claimant had no errors on confrontational naming, easily followed two and three step instructions and easily completed all language tasks. Dr. Johnson notes in regard to the claimant's physical complaints such as headache, shakiness, fatigue, etc., his responses do not suggest symptom magnification or exaggeration. Dr. Johnson writes that the claimant's overall pattern of neuropsychological testing placed the claimant in the average range of cognitive abilities with no focal impairments or significant problems. The doctor notes that there is no indicators in the findings of brain damage or traumatic brain injury. The doctor does note the claimant does show symptoms of anxiety and depression. Dr. Johnson writes that there were no significant disruptions in the claimant's thinking, emotional problems or personality disorders present.

The non-medical evidence sets forth that the Rogers Fire Department responded to a call from the respondent on June 8, 2005, at 11:43 a.m. The report sets forth that the manager, Amanda Johnson, reported that everyone in the office had been having headaches and she showed them a wet spot on the floor in the northwest corner of the building. Upon inspection, it was discovered in the mechanical room there was water dripping down into the return platform. It is further reported that one inch of water was found under the platform and the problem appeared to be a stopped up condensation drain line. John Minden with Minden

Engineering filed a report on June 29, 2005, concerning his inspection of the respondent's physical plant in Rogers, Arkansas. The results of Mr. Minden's test do set forth that the levels of carbon monoxide and carbon dioxide in the main pharmacy room did increase when the hot water heater was fired, noting that this was evidence that the hot water heater flue gases are being drawn into the mechanical air handler and distributed into the pharmacy space. Dr. Corwin Petty, a family practice physician, writes on August 31, 2006, to whom it may concern that the claimant, in his medical opinion, has suffered from delayed neurological sequelae due to prolonged carbon monoxide exposure and subsequent poisoning. Dr. Petty then refers to medical literature in support of his opinion which is attached to and made a part of his statement.

After a complete review of this entire record, I find that the claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury while working for the respondent on June 8, 2005. There is no doubt that there was some exposure or some event that took place on June 8, 2005, which affected the respondent's employees. Arkansas law, however, requires that there be objective medical findings of injury in order to find a compensable injury. This claimant has been administered several tests and has been examined by numerous physicians in varying fields in order to try and address his complaints of a variety of symptoms and all the objective testing has been normal as have the physical examinations performed by the various doctors. The claimant, by his own testimony, has admitted

to having several medical problems prior to June 8, 2005, which manifest symptoms such as the claimant is currently experiencing. Dr. Corwin Petty, a family practitioner, has opined that the claimant's ongoing problems are a result of his carbon monoxide exposure but there are no objective medical findings on which to base his opinion. Therefore, this claim should be denied in its entirety.

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 has failed to prove by a preponderance of the evidence that he sustained a compensable injury while working for the respondent on June 8, 2005. See discussion above.

ORDER

The claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury while working for the respondent on June 8, 2005. Therefore, this claim should be denied in its entirety.

IT IS SO ORDERED.

ELIZABETH DANIELSON
ADMINISTRATIVE LAW JUDGE