

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F605611

ANTHONY D. SIMPSON, EMPLOYEE

CLAIMANT

IC CORPORATION, SELF-INSURED EMPLOYER

RESPONDENT

OPINION FILED JANUARY 19, 2007

Hearing before ADMINISTRATIVE LAW JUDGE D. FRANKLIN AREY, III, on October 25, 2006, and submitted on the record before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on January 17, 2007.

Claimant appeared pro se.

Respondent represented by the HONORABLE JOHN D. DAVIS, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted in the above-style claim to determine the claimant's entitlement to workers' compensation benefits.

On September 19, 2006, a pre-hearing conference was conducted in this claim, from which a Pre-hearing Order of the same date was filed. The Pre-hearing Order reflects stipulations entered by the parties, the issues to be addressed during the course of the hearing, and the parties contentions relative to the afore. The Pre-hearing Order is herein designated a part of the record as Commission Exhibit #1.

The testimony of Anthony D. Simpson, the claimant, Jaci Barden, Glenda Fortner, Alvin Johnson, and Jeffrey King, coupled with the October 20, 2006, deposition of Dr. Blake G.

Scheer, along with medical reports and other documents comprise the record in this claim.

DISCUSSION

Anthony Dwayne Simpson, the claimant, with a date of birth of March 27, 1980, is a 2000 high school graduate. Claimant has had five jobs in the six years since graduating high school. Claimant worked at Conway Health Care, a nursing home; at KFC and Ameritech in West Helena; at Molex in Maumelle through Manpower; and for respondent, a manufacturer of school buses.

Claimant commenced his employment with respondent on June 20, 2005. Claimant explained that he worked in Department 45 which entailed laying down plywood and running screws in it for two to three weeks when he began his employment with respondent. Thereafter, the claimant was moved to doing the air ducts in back of the RE's, the longer buses., where he worked for three weeks to a month. Finally, the claimant testified that he was moved to Lower Lining beginning in August 2005, where he remained until he left the employment of respondent.

In describing his job duties in Lower Lining, claimant's testimony reflects:

Putting the directional lights on the outside of the bus, drilling the holes out, getting on the inside of the bus and putting the wire through that hole, going back on the outside of the bus and taking sheet metal and toting it on the bus and drilling it out and putting the glue on it. That's it. (T. 10).

Claimant attributed the job task of putting the glue on the metal with a caulk gun so it would stick as the source of his occupational disease. Claimant concedes that he does not know the components of the glue, which was Epoxy resin. Regarding his contact with the glue, the claimant testified:

When you're putting it up there, sometimes people are standing

over your head putting it on; and it might drop on you because they put too much up there or something. It would fall on your neck or your arm or something. (T. 11).

The claimant testified that while at one point he thought that his problem was the product of the insulation, after patch tests ruled it out, he concluded that the glue was the source.

Claimant maintains that beginning in January 2006, every day he worked glue was all over his blue jeans and shirts. The testimony of the claimant reflects, regarding the onset of his problems:

I started noticing it a couple of days before my birthday on March the 27th. On like the 23rd or 24th, I started itching real bad. I thought it was the insulation. So I went to Doctor Long, and he said -

He gave me a steroid shot and some pain pills and all that. So I went back to work, but I kept on breaking out. Then he put me on light duty, and I stopped breaking out for a while. (T. 11-12).

Claimant noted that initially while on light duty he did not handle the glue. Claimant noted that once he was returned to his department, Lower Lining, within two to three day he again started breaking out. At the time claimant was still under the impression that the source of complaint was the insulation.

Pursuant to the direction of his physician claimant put on white sleeves and some gloves, however he continued to break out. Claimant noted that thereafter he was returned to light duty and directed to be moved out of the department by his physician. Claimant maintains that while he was moved out of Lower Lining he was placed in Overhead, which was approximately five steps away. As a result of the afore, claimant asserts he continued to break out. Claimant noted that while he was not handling the glue directly in Overhead:

No. He said not to drill through it or run screws and all this stuff; but before they put the metal in the top of the bus, they've got to put the glue up there. So I guess - it didn't work. (T. 12).

In describing the symptoms he experienced as a result of his exposure to the glue in his work environment, claimant testified:

It felt like a burning sensation, and I always - every five minutes, I'd itch and get to scratching. I couldn't sleep good, had to take a shower every two or three hours. I took a shower about four or five times a day, just so I could stop itching. Then the doctor gave me a bunch of irritation cream and some pills, and I took that.

I was still itching, and then he gave me some Sarna. It was some kind of lotion. When I put it on, it would like cool my skin down so I wouldn't itch no more; and it worked. Then I got terminated. (T. 13).

Claimant noted that he continues to itch "every now and then", however it is not as bad as when he worked for respondent. (T. 13). The testimony of the claimant reflects that his employment with respondent was terminated in May 2006, however he did not stop breaking out until early July 2006. Use of the glue was part of the manufacturing process for the buses.

The testimony of the claimant reflects that he was able to continue working while experiencing the rash or breaking out. Claimant estimates that he missed a total of three to four days from work while going to the doctor for treatment of his rash. Regarding his termination, claimant noted that he was placed on light duty by his doctor until May 15, 2006, however respondent fired him on May 4, 2006.

During cross-examination, claimant denies that he broke out again with a rash in July 2006, but rather explained that it was at that point that he began to heal. At the time of the hearing claimant was employed at Sinco. Claimant's testimony reflects that while he did not use glue when working Overhead, he was nevertheless around it. Further, claimant offered that while putting up the sheet metal, he "might have touched a little bit of it". (T. 17). Claimant acknowledged that he wore gloves.

Claimant described the glue as being green in color and a gel in consistency. While the glue was dispensed with a caulking gun it did not come in a tube:

No. We had to put in inside the tube. There was a blue and yellow container in a room on the other side of the line. You'd go in there and get the tube and squeeze the handle and put in inside there, and it would turn out to be green. (T. 18).

Claimant acknowledged working around the glue for approximately six months without having any trouble or reaction to it.

Claimant's testimony reflects that the rash developed on his arms from his sleeves on down as well as around his neck and into his face. While acknowledging that he went to the emergency room on April 25, 2006, claimant denies that he had a rash on his thighs. Claimant attributes the rash on his chest to the fact that he had been scratching his arms and neck.

On further questioning, claimant acknowledged that his employment was terminated on May 4, 2006. Claimant further testified that he last experienced symptoms, which he attribute to exposure/contact with the glue, in July 2006:

It would have been my skin looking all tore up and ugly, all bumped up. Then it started healing after that. (T. 20).

Ms. Jack Barden testified that she first notice the claimant's rash in April 2006. Ms. Barden took the claimant to the emergency room in either the last week of April or the first week of May 2006, for treatment relative to his rash. Further the testimony of Ms. Barden corroborate that of the claimant regarding the frequency of showers that the claimant took to achieve relief from his symptoms. Ms. Barden testified that the only other time the claimant broke out in a rash, which was one small spot on his back, was from the patch testing in August 2006.

On cross-examination Ms. Barden testified that the claimant broke out all over his arms,

neck, back and even on his legs from scratching everywhere. Ms. Barden testified that in addition to the afore areas, on the night that she took the claimant to the emergency room the rash was in his face. Ms. Barden's testimony reflects regarding her observations of the claimant:

I saw him scratching and I saw him miserable. I saw him take a shower I don't know how many times a day, like every hour. (T. 24).

Mr. Alvin Johnson testified on behalf of the claimant. The testimony of Mr. Johnson reflects when he first became aware of the claimant's rash:

When I got off work one day and came home, I got a phone call from you saying that you'd had an injury at work. Then you came to see me, and I seen the results on your back. You were scratching and everything. (T. 25).

Mr. Johnson estimates the afore occurred a couple of days before the claimant's birthday or in April 2006. The testimony of Mr. Johnson also corroborate that of the claimant regarding the scratching and showers.

Ms. Glenda Fortner testified on behalf of the claimant. The claimant is the nephew of Ms. Fortner. Ms. Fortner's testimony reflects that she has known the claimant all of his life and that the claimant had never had any allergic reaction or rashes prior to that which is the subject of this claim. Ms. Fortner testified that she first notice the claimant's rash after observing him scratching in March 2006.

Mr. Jeffrey King testified on behalf of the claimant. The testimony of Mr. King reflects that he return to Conway from Indiana close to Easter 2006, at which time he noticed that the claimant was broke out in a rash:

Yeah. Your skin was - it looked thick. We called you Gator skin. You had a real bad rash on your neck, back, arms.

Yeah. You kept a lot of creams and stayed in the shower four or five times a day, just itching all day, wouldn't go outside or nothing.

Oh, yeah. You looked real sad. Then at one point, your eyes got real puffy. So the rash was real bad. (T. 29).

Mr. King acknowledge that he does not nor has he ever worked for respondent. At the time of his observations of the claimant Mr. King testified that he lived with the claimant.

On October 20, 2006, the parties obtained the deposition testimony of Dr. Blake G. Scheer, which is included in the record as Claimant Exhibit #2. Dr. Scheer attended medical school at UAMS, did internal medicine residency for three years, two years of allergy and immunology fellowship and has been practicing at the Little Rock Allergy and Asthma Clinic for approximately five years.

The testimony of Dr. Scheer reflects that he evaluated the claimant. A chart note of August 8, 2006, reflects entries made by Dr. Scheer regarding the claimant. Regarding a change of a date reflected on the chart note Dr. Scheer explained:

We had started our discussion, and my first question was when it started.

And that was when they had - - I had thought April was when the rash first appeared, but that was when he first saw one of my partners was apparently in April, is the way I understand it.

And then he had mentioned that it started back in January, approximately.

And he couldn't remember the exact dates, so that's why I just listed 1/06. (CX. #1, p. 6).

Dr. Scheer further testified regarding the August 8, 2006, chart note:

It started in approximately 1 of '06, arms, face, chest, and neck"
- - across face, chest, arms, and neck, is what that says.

It looked like small bumps. It scaled after scratching. Itchy. Worse with heat. Better with Sarna, which is a lotion. Rash completely gone at this point. Worse around insulation. Last job - - lost job over doctor advice - - or doctor absence, I'm sorry.

Previously at work not around insulation, but around it about one week. And he had a lot of increased itching and it progressed to a rash. After leaving the insulation area, he was better. (CX. #2, p. 7).

Dr. Scheer was questioned regarding his August 14, 2006, correspondence to the claimant. Specifically, the claimant's history as relayed by him during his initial visit with Dr. Ruddell. Dr. Scheer testified that Dr. Ruddell actually saw the claimant's rash, which she described as an eczematous rash, and recorded that the "rash more along three weeks prior to that visit, so either late March or early April". (CX. #2, p. 8).

Dr. Scheer testified regarding the mechanism of the patch test:

The way it - - what a patch test is, it's a way to look for a delayed contact hypersensitivity, or a Type IV allergy reaction. It's usually associated with types of contact dermatitis that are eczematous. It usually doesn't help in things like allergic rhinitis, you know, a runny nose, and things like that.

And so when you have occupational rashes, one of the most common things you see is a Type IV reaction. What they are is, they're a small amount of chemical that's predetermined.

There are several - - what I have is what's call a North American series. It's a predetermined list of chemicals that are common in North America to cause this type of rash. We focus that based on what the patient's history is and based on what they've known to have been exposed to. And what they are is small amounts that are not irritant, but they can produce a localized allergic reaction. (CX. #2, p. 9).

Claimant underwent the Miscellaneous Allergen Patch Tests on August 8, 2006. Only the epoxy resin patch from the test came back positive in the claimant's testing.

Dr. Scheer noted that the area of allergic reaction is "very history driven", in that the history is very important to what is tested for. Dr. Scheer's testimony reflects:

That actually is what I look for, believe it or not, because if it's - - kind of a rule of allergy, if you want to look at it as that, is you have to be exposed before you can have an allergy reaction. That's the same with an allergic contact allergy like this or if you're allergic to a cat with nasal allergies - - it may not be the first few times you're exposed, but you have to have those exposures before you develop an allergy. (CX. #2 p. 12).

Dr. Scheer elaborate with respect to allergic contact dermatitis and testing:

There are some - - I mean, these kind of tests would - - this is the kind of test you do, is a patch test, looking for a delayed reaction. The question is whether you have a reason for that. Now, if there is a previous rash that you were concerned about, that's the time you can do it. But if there's never been a rash or a reaction, there's no evidence that predictive testing is very helpful.

Some people do it with certain jobs. There are people who work around certain chemicals that are higher on the list of potential allergens, and it has been looked at - - and if you look at dermatology literature - - but it's never been something that's been practiced because the yield is not very good. (CX. #2, p. 14).

Dr. Scheer testified that in his opinion, based on the history of the claimant's exposure and resulting reaction, within a reasonable degree of medical certainty that the claimant's exposure to epoxy resin at work was the cause of rash sustained by the claimant. (CX. #2. p. 14-15). Dr. Scheer offered the following explanation of why the claimant's reaction did not occur until approximately ten months following his initial contact with the epoxy resin:

If he wasn't sensitized at that point. The way that allergy works, again, without - - I don't want to - - I don't know how in depth you want to go, but what happens is, the allergen has to be absorbed through the skin. It has to be processed by a type of cell in the skin called a Langerhans cell. That cell takes it to a local lymph node where other immune mediators affect it, and that actually makes your immune system have a memory for it, and that's how you develop it. So usually that takes seven to ten days minimal for that to happen after the exposure is going to cause it.

There is no evidence that one exposure can do it on everybody or, again, 100 exposures. There's just - - it's not a set number. So it's not unusual to have somebody exposed to it a couple of weeks and have a reaction or exposed to it for a year and have a reaction. (CX. #2, p. 15-16).

Regarding the amount of time for the contact dermatitis to clear or go away once exposure has ceased Dr. Scheer's testimony reflects:

And that's a good question. It varies, depending on how severe it is and how much change there is in the skin. If you have a very long drawn-out reaction where it's very deep and it's a very thick, what we call, lichenification, or thickening of the skin, that can take several weeks or months. If it was a very mild reaction, it can take just a few days of getting out of the exposure area. (CX. #2, p. 19).

The Material Safety Data Sheet relative to Epoxy Resin reflects symptom and signs of exposure to include "moderately irritating to skin and eyes; possible skin sensitizer" and "vapor are irritating to skin and eyes". (CX. #1, p. 6).

The Health & Safety medical clinic notes of respondent reflects that the claimant was seen on April 12, 2006, with rash to arms for one week. The complaint was assessed as dermatitis. (CX. #1, p. 27). A Work Status Report of April 12, 2006, relative to the claimant reflects restrictions on the claimant's work activities which included no drilling into or through fiberglass and no working with glue. The afore reflected an expected release to regular duty on April 25, 2006. (CX. #1, p. 28). The claimant was again seen at the medical clinic of respondent on April 13, 2006, and April 19, 2006, relative to a rash on his arms and neck. (CX. # 1, p. 30). As of April 19, 2006, the claimant was placed on restricted duties through May 15, 2006. (CX. #1, p. 31).

Respondent terminated the claimant's employment on May 4, 2006. Documents contained in the record reflects that the basis for the termination purportedly related to his failure to report for work. Claimant maintains that he had furnished doctor's excuses for the days in question. (CX. #1, p. 32-33). As previously noted, the claimant was on restricted duty from

April 19, 2006, through at least May 15, 2006.

On April 25, 2006, claimant was seen at the emergency room of Conway Regional Health System with a chief complaint of allergic reaction. Claimant provided a history of the rash all over his arms and neck since approximately April 11, 2006. (CX. #1, p. 35-39). The discharge summary relative to the claimant's April 25, 2006, emergency room visit reflects that the claimant should be able to return to work in five (5) days. (CX. #1, p. 40-46).

On April 27, 2006, claimant was seen at Little Rock Allergy & Asthma Clinic by Dr. Deanna N. Ruddell. Dr. Ruddell authored release slip noting that the claimant could return to work on May 1, 2006. (CX. #1, p. 49). Dr. Ruddell's narrative report regarding her evaluation of the claimant reflects, in pertinent part:

I had the pleasure of evaluating you in the allergy clinic on April 27, 2006. As we talked about that day, you developed an eczematous rash approximately three weeks prior to this visit. You stated that it worsened two days ago. At that time you went to the emergency room for treatment. You were given a steroid dosepak, loratadine, Benadryl, and cimetidine. You stated that you have not had this type of rash before. You stated that you have changed soaps and detergents. You stated that your job involves working on school buses and fiberglass insulation and you have done this over the past approximately seven months.

* * *

IMPRESSION: Eczematous rash on sun exposed areas possibly related to working with fiberglass insulation or some type of contact allergy. (CX. #1, p. 50).

After providing symptomatic medications in a treatment plan, the April 27, 2006, report of Dr. Ruddell noted that the claimant was to follow-up at the clinic on May 2, 2006, for referral to Dr. Scheer for patch testing. Claimant was in fact seen at the clinic on May 2, 2006, by Dr. Ruddell, who authored an off-work slip reflecting that the claimant could return to work on May 3, 2005.

(CX. #1, p. 54). A May 3, 2006, office note of Little Rock Allergy & Asthma Clinic, authored by Dr. Ruddell reflects that the claimant was seen on that date as well. (CX. #1, p. 55). Claimant continued to receive medical treatment at the afore facility through August 2006, relative to his diagnosed contact dermatitis. (CX. #1, p. 56-63).

After a thorough consideration of all of the evidence in this record, to include the testimony of the witnesses, review of the medical reports and other documentary evidence, application of the appropriate statutory provisions and case law, I make the following:

FINDINGS

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On April 12, 2006, and at all other relevant times, the relationship of employee-employer existed between the parties.
3. On April 12, 2006, and at all times pertinent, the claimant earned wages sufficient to entitle him to weekly compensation benefits of \$355.00/\$266.00, for temporary total/permanent partial disability.
4. The evidence preponderates that the claimant sustained an occupational disease, pursuant to Ark Code Ann. §11-9-601, in the form of contact dermatitis as a result of his exposure to epoxy resin in his employment with respondent.
5. The respondent shall pay all reasonable hospital and medical expenses arising out of the claimant's compensable occupational disease .
6. The respondent has controverted this claim in its entirety.

CONCLUSIONS

The claimant asserts that he suffered an occupational disease within the course and scope

of his employment with respondent which required medical treatment and rendered his totally incapacitated from engaging in gainful employment for a period of time. As a consequence of the afore, claimant seek corresponding temporary total disability and medical benefits.

Respondent deny that the claimant sustained a compensable injury while within its employment and controvert the claim in its entirety.

The present claim is one governed by the provisions of Act 796 of 1993, in that the claimant asserts entitlement to workers' compensation benefits as a result of an occupational disease having been sustained subsequent to the effective date of the afore provisions.

Ark. Code Ann. §11-9-601 (e) (1), provides:

(A) "Occupational disease", as used in this chapter, unless the context otherwise requires, means any disease that results in disability or death and arises out of and in the course of the occupation or employment of the employee or naturally follows or unavoidably results from an injury as that term is defined in this chapter.

(B) However, a causal connection between the occupation or employment and the occupational disease must be established by a preponderance of the evidence.

There is no evidence in the record to reflect that the claimant experienced allergic reactions or rashes prior to his employment with respondent. The credible testimony in the record reflects that once the claimant developed a rash on his arms and neck he attributed it to his work environment and possible exposure to insulation utilized in the manufacturing process of respondent. Claimant reported his rash to appropriate supervisory personnel and received medical treatment at the onsite clinic of respondent.

The presence and severity of the rash on the claimant's arms, neck, face, chest and other areas of his body was corroborated not only by the witnesses testifying on behalf of the claimant

but also in the medical record of the claimant's treating physicians and those of the medical clinic of respondent. Further, the patch test conducted by Dr. Scheer confirmed the claimant's allergic reaction of Epoxy resin, a product utilized by respondent in its manufacturing process. Additionally, the Material Safety Data Sheet clearly reflect the symptoms and signs of exposure to Epoxy resin, which were symptoms also experienced by the claimant. The claimant has sustained his burden of proof by a preponderance of the evidence that he sustained an occupational disease in the form of contact dermatitis as a result of exposure to Epoxy resin in his employment with respondent. Respondent has controverted this claim in its entirety.

Ark. Code Ann. §11-9-508 (a) mandates that the employer provide such medical services as may be reasonably necessary in connection with the employee's injury. *Cox v. Klipsch & Associates*, 71 Ark. App. 433, 30 S.W.3d 764 (2000). The evidence preponderates that the medical treatment rendered to the claimant relative to the sustained contact dermatitis occupational disease, was reasonably necessary in connection with his injury, and for which respondent is liable.

By the claimant's own admission he only missed three to four days from work as a result of the compensable occupational disease. At the time of the termination of the claimant's employment by respondent on May 4, 2006, claimant was at work and discharging appropriate restricted job duties. The claimant was not totally incapacitated from engaging in gainful employment subsequent to May 4, 2006. While it is undisputed that the claimant was on restricted duties, pursuant to the directions of his treating physician relative to his occupational disease, the claimant was not directed to remain off work by his physician. *Superior Industries v. Thomaston*, 72 Ark. App. 7, 32 S.W.3d 52 (2000). Claimant has failed to sustain his burden of

proof by a preponderance of the evidence that he is entitled to the payment of temporary total disability benefits, to which he would be entitled while within his healing period and totally incapacitated from earning wages.

AWARD

The respondent is herein ordered and directed to pay all reasonably necessary medical, hospital, nursing and other apparatus expenses, to include medical related travel, growing out of he claimant's compensable occupational disease/injury of contact dermatitis of April 12, 2006.

Said sums accrued shall be paid in lump without discount.

This award shall bear interest at the legal rate pursuant to Ark Code Ann. §11-9-809, until paid.

Matters not addressed herein are expressly reserved.

IT IS SO ORDERED.

Andrew L. Blood, ADMINISTRATIVE LAW JUDGE