

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. E812970

MARY WADLEY, EMPLOYEE

CLAIMANT

**ARK GENERAL INDUSTRIES, INC.,
EMPLOYER**

RESPONDENT

**AMERICAN PROTECTION INS. CO.,
CARRIER/TPA**

RESPONDENT

OPINION FILED FEBRUARY 15, 2007

Hearing before Administrative Law Judge O. Milton Fine II on November 28, 2006, in Searcy, White County, Arkansas.

Claimant represented by Mr. R. Theodor Stricker, Attorney at Law, Jonesboro, Arkansas.

Respondents represented by Mr. Eric Newkirk, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On November 28, 2006, the above-captioned claim was heard in Searcy, Arkansas. A prehearing conference before Administrative Law Judge Mark Churchwell took place on September 18, 2006. A September 22, 2006 Prehearing Order that was entered by Judge Churchwell 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. Claimant and Respondents added an additional stipulation, resulting in the following five, which I accept:

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The employer/employee relationship existed on or about September 15, 1998, the date of the Claimant's alleged injury.
3. The Claimant's average weekly wage is \$164, and her compensation rate is therefore \$109 per week.
4. The claim has been controverted in its entirety.
5. Respondents paid for treatment to Claimant through December 17, 1998.

Issues

At the hearing, the parties discussed the issues set forth in Commission Exhibit 1.

Unchanged, they are as follows:

Claimant

1. Whether the injury that is the subject of this claim is compensable.
2. Whether the Claimant is entitled to temporary total disability benefits for any period of time.
3. Whether the Claimant is entitled to permanent partial disability benefits.
4. Whether the Claimant is entitled to rehabilitation.
5. Whether the Claimant is entitled to medical benefits and relief to which Claimant may be entitled.
6. Whether the Claimant is entitled to attorney's fees.

Respondent

7. Whether the Claimant sustained a compensable injury as a result of her exposure to the heated epoxy.

8. In the event that the Claimant sustained a compensable injury as a result of her exposure to the heated epoxy, whether she is entitled to benefits beyond those which have already been provided by the Respondents.

Administrative Law Judge

9. Injury versus occupational disease.
10. Burden of proof if an occupational disease.
11. If an injury, applicable statutes.

Contentions

Claimant. Claimant contends that she suffered compensable injuries to her lungs, eyes, skin on upper extremities, and inside of her mouth on September 15, 1998. She also asserts that she is entitled to temporary total disability benefits from her last date of work, September 15, 1998, to an indeterminate future date. Along with permanent partial disability benefits, rehabilitation and additional medical benefits, Claimant contends that she is entitled to attorney's fees.

Respondents. Respondents contend that Claimant did not sustain a compensable injury as a result of her exposure to the heated epoxy on September 15, 1998. They argue that the claim is governed by Ark. Code Ann. § 11-9-601 pertaining to occupational diseases, and that the Claimant cannot prove by clear and convincing evidence that she sustained a compensable injury. In the alternative, if the Claimant is found to have sustained a compensable injury, Respondents assert that all benefits to which she is entitled have already been paid by them. Specifically, the Respondents initially accepted this claim as compensable and paid for all treatment received by the Claimant from Drs. Ben R. Lowery, Terry Yates, and Joseph H. Bates. Furthermore, Respondents state that

any symptoms and/or medical problems the Claimant currently has are the result of pre-existing medical conditions that are not work-related and thus not the responsibility of the Respondents.

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 this claim.
2. The stipulations set forth above are reasonable and are hereby accepted.
3. The Motion to Quash the subpoena duces tecum to DMI-Arkansas is denied.
4. The record shall not be left open to allow Claimant to present evidence related to the material safety data sheets subpoenaed from movant DMI-Arkansas.
5. Claimant has proven by a preponderance of the evidence that she sustained compensable injuries to her lungs, skin and eyes as a result of the September 15, 1998 epoxy exposure.
6. Claimant has not proven by a preponderance of the evidence that she suffered any of the remaining compensable injuries that she has alleged were caused by the September 15, 1998 epoxy exposure.
7. Claimant has not proven by a preponderance of the evidence that she is entitled to temporary total disability benefits.

8. Claimant has not proven by a preponderance of the evidence that she is entitled to permanent partial disability benefits.
9. Claimant has not proven by a preponderance of the evidence that she is entitled to rehabilitation benefits.
10. Claimant has not proven by a preponderance of the evidence that she is entitled to medical treatment beyond that already paid for by Respondents.

PRELIMINARY RULINGS

Motion to Quash

As reflected in Commission Exhibit 3, on the day of the hearing, Doug Cook, Plant Manager for DMI-Arkansas d/b/a Arkansas General Industries, filed under Ark. R. Civ. P. 45(d) a motion to quash a subpoena duces tecum allegedly served on it by the White County Sheriff's Office the previous day, November 27, 2006. The movant failed to attach the subpoena with the return of service to the motion (it is unquestioned that I signed such a subpoena, per the request of Claimant, as seen from the copy of the subpoena, along with Claimant's and Respondents' responses to the motion to quash, which have been collectively blue-backed), but did include an affidavit by Mr. Cook. In that affidavit, Mr. Cook stated: (1) that he was served with the subpoena duces tecum at approximately 1:00 p.m. on November 27, 2006, for attendance with documents at the hearing to be held the next day; (2) that Claimant was employed by AGI, Inc. in 1998; (3) that the subpoena duces tecum requests all Material Specification Data Sheets (hereinafter "MSDSs") for 1997 through the present; and that (4) Movant DMI-Arkansas currently has over 700 active MSDSs throughout the plant, it would be burdensome to produce all of them, and that the

ones currently posted would not be relevant to the ones contemporaneous with Claimant's employment at Arkansas General Industries.

Claimant and Respondents were afforded an opportunity to file a written response to the Motion to Quash. Again, those are blue-backed to the record in this matter.

Rule 45(d) of the Arkansas Rules of Civil Procedure provides in pertinent part:

A witness . . . shall be obligated to attend for examination on trial or hearing in a civil action anywhere in this State when properly served with a subpoena at least two (2) days prior to the trial or hearing. The court may grant leave for a subpoena to be issued within two (2) days of the trial or hearing.

If this provision applies, it is clear that the motion should be granted. The subpoena was served less than two days before the hearing. Moreover, Claimant did not ask the Commission to grant leave as outlined in the rule.

That does, however, beg the question of whether Rule 45 applies to a Workers' Compensation hearing. Under AWCC R. 099.16, it is clear that those provisions governing discovery apply. As for the balance of the rules, the governing authority is Ark. Code Ann. § 11-9-705(a)(1) (Repl. 2002):

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.

It is thus clear that a motion under Ark. R. Civ. P. 45(d), per se, is not well-founded in that the provision does not apply to the proceeding at hand. For that reason, the Motion to Quash is denied.

However, that does not resolve the issue of the MSDSs. Claimant at the hearing asked that the record be kept open to allow this evidence to come in. But Mr. Cook's

testimony via affidavit was that he would have no way to determine what MSDSs were posted prior to 2002, and that there are over 700 active MSDSs throughout the DMI-Arkansas plant at present. It thus does not appear that his testimony and production of these voluminous documents of questionable relevance would help to “best ascertain the rights of the parties.”

It does appear that the pertinent evidence regarding the applicable MSDS information is already in the record, as Respondents noted at the hearing. The September 15, 1998 Accident Report Form by Dr. Terry Yates, which is part of both Claimant’s Exhibit 1 and Respondents’ Exhibit 1, states that “The chemical that [Claimant] was exposed to is called Bisphenol-f hypoxy resin . . . According to the safety data sheet it basically is more just irritative than it needs to be treated.” Moreover, in his December 17, 1998 letter to the Respondent carrier that is part of Respondents’ Exhibit 1, Dr. Joseph H. Bates states that he was “asked . . . to examine Ms. Mary Wadley regarding her pulmonary condition and to assist in this evaluation [the Respondent carrier] sent . . . material safety data sheets concerning a product to which Ms. Wadley was exposed.” His letter apparently produces the substance of the MSDS relevant to this proceeding:

The material safety data sheet indicates that the material in question is an epoxy substance that causes eye irritation and respiratory tract irritation when inhaled. When ingested it may cause vomiting.

Finally, in his July 10, 1999 letter that is part of Claimant’s Exhibit 1, Dr. Glen C. Knowles states:

I have reviewed the Material Safety Data Sheets (MSDS) and the heated epoxy did show some respiratory disorders as a response to exposure to the epoxy. I called Loctite, who makes the epoxy, and was informed the epoxy MSDS no longer shows respiratory side effects. A copy of the new MSDS was faxed to my office and it indeed does not show any respiratory side effect of the drug at room temperature.

However, there appears to be a chemical change when the compound is heated, and this is not addressed in the new MSDS.

For that reason, under § 11-9-705(a)(1) there is no reason to leave the record open, as what is there at present will enable the Commission to “best ascertain the rights of the parties.” I might add that the above shows that Claimant has clearly had notice of the MSDS evidence since the inception of this claim, which mitigates against leaving the record open. *Cf. Mason v. Lauck*, 232 Ark. 891, 340 S.W.2d 575 (1960)(in order to submit new evidence, claimant must show, inter alia, that claimant was diligent in presenting the evidence to the Commission); *Haygood v. Belcher*, 5 Ark. App. 127, 633 S.W.2d 391 (1982)(same). Therefore, the record will not be kept open.

Attorney's Lien

As noted in Commission Exhibit 2, Attorney Kevin Odum was afforded an opportunity to appear at the hearing to present evidence in support of his claim for a \$350 attorney's lien that was filed on May 14, 1999. Mr. Odum did not appear. Accordingly, the lien claim is denied.

CASE IN CHIEF

Testimony

The witnesses at the hearing testified as follows:

Claimant. Mary Jane Wadley, the Claimant, testified that she is 50 years old. She began working for Arkansas General Industries in August 1998, about three or four weeks before the incident at issue occurred. The Respondent employer, according to the evidence, makes electric motors. Part of the manufacturing process requires that the

motors or components thereof be coated with a substance that is baked on in an oven at the plant.

Claimant stated that on September 15, 1998, she was working, putting motors up on the hooks, as she had been instructed. Before her break, a man walked into the varnish room carrying a bucket. The girl Claimant was training under, Linda Cox, asked Claimant if she could carry on her job, and Claimant answered yes. Claimant kept putting the motors up on the hooks until her break. According to Claimant, when she returned to her job at 9:12 a.m., she smelled something that at first she thought was popcorn. A co-worker went to check out the smell, but did not return. Claimant went through one of the crates of the motors and turned to her right. When she did, she noticed that there was a lot of rolling black smoke. At the time, she was approximately 30 feet from the oven. She then felt burning in her eyes and on her skin, and she began to have a bitter taste. By the time she had left the area, Claimant felt burning in her throat and felt that she was about to vomit. She went to the bathroom to flush her skin. In the meantime, three employees, Johnny Hodges and two foremen named James and Sherry were trying to roll the metal table that had the aforementioned bucket on it out the back door.

Claimant testified that she was told that the burning substance was epoxy. Mr. Hodges had Claimant place her head between her legs to help her breathe better. She was taken to a physician in Searcy. While at the doctor's office, she had to run to the restroom to vomit. After returning to Respondent employer to sign a statement, Claimant was taken to her sister's house. At the house, she was placed into the shower and washed down. Each day thereafter, Respondent employer had Claimant come to work and then she was taken to the doctor.

As for her symptoms, Claimant testified that after the September 15, 1998 incident, her scalp, eyes, neck, hands, arms and legs were burned. She stated that her eyes were 20/20 before the incident, but that they have been continually deteriorating since and that she requires strong eyeglasses now. Her eyes are constantly sore now, and she requires eye drops two to three times daily. Blisters appeared in her mouth and on her tongue after the incident, and then after about six months, when the blisters started healing all of her teeth had to be extracted because of infection. The blisters were in her nose and throat as well, and she required Lidocaine solution to be able to drink. She also experienced shortness of breath, which got worse after a few months. Claimant had seizures as well. She stated that she had a rash like a sunburn over the areas of her body that were not covered at the time of the incident—she was wearing safety glasses, a shirt, shorts, gloves, long socks, shoes, and an apron at the time. The rash was visible for six months after the incident, and her skin still feels like it is burning some. She also testified that she still has seizures, which involve her losing consciousness, trembling, and having bladder incontinence. She stated that in one instance, a seizure caused her to break her collarbone. Claimant also testified that she had to have her urethra surgically rebuilt; that she has leaking heart valves, that she has GERD; that she suspects she has cancer; and that she has post-traumatic stress disorder. She attributes all of these conditions to her alleged exposure to burning epoxy on September 15, 1998. She testified in her deposition, which was admitted as Respondent's Exhibit 3, that she underwent psychiatric treatment following her 1995 divorce until 1997 or 1998.

Claimant testified that Respondent employer did not offer to send her for medical treatment other than to the company physician, and that Respondent employer ultimately terminated her. She stated that she has continued to seek treatment on her own.

She also testified that before the September 15 incident, that her health “was 99.9 percent good ,” that she “ was in great shape,” and that she “was energized and raring to go.” But on cross-examination she admitted that before the incident, she had applied for Social Security disability for Raynaud’s Disease. She also experienced health problems in February 1998 that she attributed to an allergic reaction to a bee sting, which included nausea, vomiting, pulmonary distress and edema. She also stated that she was a pack-and-a-half per day smoker before the September 15 incident, and that she smokes only a couple of cigarettes a day now. Claimant admitted that in her March 8, 1999 deposition (Respondents’ Exhibit 3), she stated that her health problems were only skin burning and throat pain. But she stated at the hearing that her attorney told her to say that.

As for the incident itself, she testified at the hearing that she is not aware of any other employees of Respondent employer who experienced problems that day. However, Claimant testified in her 1999 deposition that a number of people felt the effects of the burning substance:

Q How many other people were in the room that were exposed?

A How many? There was a lot of, there was a lot of operators on the floor.

Q And were they also exposed to this chemical?

A They were exposed to this, too. Some of them were having a lot of stomach aches. Some were vomiting. Yeah, it wasn’t just me. But I’m, I’m the only one, I guess, that just got right, you know, where it was down at the skin, the eyes. And even with safety glasses on.

Q Did any of these other folks get any medical treatment, that you are aware of?

A Yes, they went to White County Hospital that night, a couple of the girls did.

Julie Gaskin. Ms. Gaskin, Claimant's sister, testified that she also worked for Respondent employer on September 15, 1998. She stated that Claimant worked there over 90 days. Because she was home sick on September 15, Ms. Gaskin could not testify concerning the incident itself. However, she observed Claimant when she was brought to her house after the incident. She described Claimant as

Very, very red; blisters in her mouth, blisters all in her nose and coming down right in here (indicating) She could not hardly swallow. I took a dropper and give [sic] her some water, and she laid her head back to swallow. There was [sic] multiple blisters in her mouth.

Ms. Gaskin testified that Claimant smelled like burned popcorn at the time. The next day, Claimant returned to work, but was sick and throwing up and went home. She testified that Respondent employer continued to send Claimant to Dr. Yates for treatment. Ms. Gaskin stated that she observed Claimant to have burned spots on her face. Also, she witnessed Claimant gasping for air and experiencing seizures involving drooling and urinary incontinence. The seizures increased in number in the months following the incident, and that in approximately September 1999, Claimant had an especially severe one. She stated that blisters still appear on Claimant's face and in her nose and mouth, and that they smell like a burned chemical. Ms. Gaskin also stated that Claimant's teeth had to be removed about four months after the incident because her gums were rotting, and that Claimant did not have glasses before the incident but now has to have thick ones in order to see.

On cross-examination, Ms. Gaskin denied that Claimant had applied for Social Security disability before the incident at issue. She admitted that it was several months

after the incident before the medical records showed Claimant to be experiencing seizures, but stated that that was because it was the first time she had sought treatment for them. She also stated that Claimant's physicians have not witnessed her experiencing a seizure. Finally, Ms. Gaskin testified that no one else working for Respondent employer experienced problems as a result of the September 15, 1998 incident. She stated, as did Claimant, that the employees working in Claimant's area did not wear a fresh-air mask.

Betty Wadley. Ms. Wadley, Claimant's mother, testified that she has taken care of Claimant since the incident at issue. She stated that Claimant's health before the incident was good—with no rashes, breathing problems, or seizures. Claimant did have some emotional problems before the incident, due to an abusive marriage. Ms. Wadley testified that she observed Claimant when she came to Ms. Gaskin's house following the September 15 incident. Claimant was coughing and had a red rash on her face. She was having difficulty breathing. She had blisters in her mouth, and had to have Lidocaine to numb her throat to be able to eat.

On cross-examination, Ms. Wadley stated that she has witnessed Claimant experiencing seizures within a week after the September 15 incident. She testified that Claimant has two or three seizures in a day sometimes, and that she did not have this condition before the incident. She stated that Claimant was in "perfect health" before she went to work for Respondent employer, and that Claimant did not apply for Social Security disability before the incident.

Respondents called no witnesses.

Records

Pre-incident. The medical records of Claimant that were introduced at the November 28, 2006 hearing reflect that she was diagnosed with post-traumatic stress disorder and migraine headaches, among other things, as a result of her examination at the North Arkansas Human Services System on November 17, 1995.

Claimant was diagnosed with chronic bronchitis by Radiologist Dr. John E. Bell on May 29, 1996. Exactly one year later, she was diagnosed by Dr. Glen C. Knowles with Raynaud's Syndrome, venous insufficiency, tension migraine, and chest pain. When she presented in August 1997 with chest pain running down her left arm, a swollen right hand, headache, popping ears, vomiting and burning when urinating, she was diagnosed as having, inter alia, a urinary tract infection and a possible panic attack. She presented to University Hospital in Jackson, Mississippi, on February 1, 1998 with shortness of breath, a cough with blood-tinged sputum, dyspnea on exertion, and discomfort with inspiration. She also had a subjective fever and chills with nausea and vomiting with no hematemesis. Her February 8, 1998 discharge summary reflects that she was diagnosed with hypoxic respiratory failure secondary to a bee sting, hypokalemia, and bilateral pneumonia, with secondary diagnoses of Raynaud's Phenomenon and fibromyalgia. On August 3, 1998, she presented with chest tightness and had a productive cough. An x-ray showed her lungs and pleural spaces to be clear. She was diagnosed with, inter alia, bronchitis. When she returned on August 7, 1998, complaining of a sore throat, cough and a knot on her left breast, she was also diagnosed with costochondritis.

Post-incident. On September 15, 1998, after the alleged incident involving the heated epoxy, Dr. Terry Yates examined Claimant. It was reported that Claimant was

exposed to "Bisphenol-f hypoxy resin." Reportedly, it had ignited in an oven, and Claimant hand another co-worker "took the bucket and carried it toward the door." The records reflect that Claimant's eyes and skin were fine. Claimant presented as nervous, shaky, short of breath, and complaining of chest tightness and a headache. Her lungs were mostly clear, and an x-ray showed no fluid on the lungs or infiltrates. She was diagnosed with reactive airway disease secondary to chemical exposure and irritative bronchitis and given, *inter alia*, a Sterapred dosepak and Ventolin and Atrovent inhalers.

The next day, September 16, the records of Dr. Yates show that she complained of burning around her neck and in her lungs. While her lungs were clear, she presented with a hacking cough and was coughing up yellowish-green sputum. The skin of her neck appeared irritated and was erythematous. She was diagnosed with reactive airway disease and skin irritation, both secondary to chemical exposure, and was given Bactrim and Elocon cream for her neck.

Also on September 16, Claimant saw Dr. Knowles. As reflected in the record, he observed a "red rash" on her chest and neck and diagnosed her as having had a "reaction to [a] toxic chemical."

On September 18, as reflected in the records, she presented with, *inter alia*, burning eyes and skin. Her breathing appeared to be okay; her lungs were clear without rhonchia. Her throat was clear. But her eyes showed the conjunctiva injected. Among other things, Dr. Yates prescribed Vistaril and Patanol eye drops.

On September 21, 1998, she returned to Dr. Yates for follow-up. Claimant indicated that she was much better and wanted to return to work if possible. An examination of her skin showed that most of the erythema had resolved. Her lungs were clear, although she

had a productive cough. And Claimant did not present as being nearly as nervous and shaky, which Dr. Yates attributed to the ending of the dose pak. Dr. Yates approved Claimant returning to work and approved the refilling of her inhalers.

On September 25, 1998, as reflected in the medical records, Claimant returned to Dr. Yates. After returning to work in the varnish room for two or three days, on September 24 she started having skin irritation, irritation of the throat and mouth ulcers. Dr. Yates found Claimant's skin to be erythematous, especially around her neck and upper back and chest area and to a lesser degree on her face and upper arms. He surmised that Claimant was already sensitized from the earlier fumes, and that her return to the varnish room had aggravated her condition. He recommended that Claimant stay away from the varnish room or around glue or other nauseous fumes indefinitely. He prescribed a lotion for her skin and Lidocaine for the mouth and throat irritations.

In a follow-up visit on October 2, 1998, she complained of mouth blisters and burning in her eyes and on her skin. The conjunctiva and sclera appeared normal upon examination by Dr. Yates. He saw no mouth ulcers, but noted that her dentition was poor. However, Dr. Yates in his follow-up report to the Commission on that date did list mouth ulcers, along with skin and bronchial irritation, as diagnoses.

On October 7, 1998, she presented to Dr. Glen C. Knowles with migraine headaches, blurry vision, vomiting and diarrhea, all of which she attributed to the chemical exposure. She was diagnosed as having sinusitis and headaches.

Dr. Yates referred Claimant to Dr. Ben R. Lowery, an ophthalmologist. His October 9, 1998, letter to Dr. Yates regarding his October 8 examination of Claimant reflects that he found her uncorrected vision to be 20/60 in the right eye and 20/50 in the left. He was,

however, able to correct her vision to 20/20, bilaterally. A slit lamp examination showed that Claimant had severe dry eye syndrome in both eyes. His letter stated that he “saw no evidence of damage from the chemicals.” A Schirmer test showed that Claimant produces no tears in either eye. In addition to medication, Dr. Lowery prescribed glasses.

In another letter dated October 22, 1998, Dr. Lowery again addressed the findings of his October 8 examination:

I know that it is very likely that the chemical smoke irritated [Claimant's] condition and caused some burning. I believe, however that her primary condition of dry eye syndrome existed prior to the smoke getting in her eyes. There was no physical evidence of chemical or other type of injury to her ocular adnexal structures. Furthermore, it is very common to find rather severe dry eye syndrome in women beginning in their 40's . Men have the condition but not nearly as often. She had a S[c]hirmer test, revealing zero production of tears after topical anesthesia, when timed for 3 minutes. This was the same in both eyes. I am very sympathetic to Mrs. Wadley's condition as I know it can be very uncomfortable. Furthermore, she is probably facing a lifetime use of ocular lubricants and possibly she will also have to have plugs in her lacrimal drainage system in the future.

During another visit to Dr. Yates on October 9, 1998, Claimant was still complaining of burning in her eyes and on her skin at times, plus a cough. Dr. Yates' notes from the examination reflect the following:

Again the eyes, conjunctiva are normal appearing. The sclera are normal appearing. No abnormalities appreciated. On examination of the skin I do not appreciate any rash whatsoever. She complains of discomfort around her neck. The skin is normal appearing. There is no swelling or irritation at all present. On examination of the lungs, the lungs are completely clear bilaterally and anteriorly. In particular, there is no rhonchi. There is no prolonged expiratory phase. Breath sounds are equal bilaterally. She was not tachypneic. She was not in any kind of respiratory discomfort and distress. She could talk plain [sic] without any problems. She did not cough the entire time I was in the room.

Dr. Yates wrote that Claimant's examination was “completely normal.” He released her to regular duties, but stated that “[i]t probably would be to her benefit to avoid any strong

chemical smells in the future both at work and at home as she has underlying lung problems that might be aggravated by this.”

On November 4, 1998, Claimant presented to Dr. Knowles with complaints of her skin burning and feeling raw, along with a sore throat and chest. She stated that her face would turn red if hot. Dr. Knowles in his notes observed her face to look okay, and did not feel any dryness. On November 13, she again presented to Dr. Knowles with complaints of burning on her neck, face, and ears, along with aching in her bones. However, he observed no abnormalities. This was also the case, according to the records, when he saw her on November 13, 1998.

Kemper Insurance Companies referred Claimant to Dr. Bates, who examined Claimant and took a medical history from her on December 1, 1998. In his letter to Kemper that is part of Claimant’s Exhibit 1 and Respondent’s Exhibit 1, Dr. Bates states that Kemper sent him “certain . . . material safety data sheets concerning a product to which [Claimant] was exposed.” The letter further recites that the MSDS “indicates that the material in question is an epoxy substance that causes eye irritation and respiratory tract irritation when inhaled.” Dr. Bates observed no nasal obstruction. Claimant did not appear to be in distress. Her mucus membranes were pink and without erythema or exudate. Her thyroid was not enlarged. He found nothing abnormal about her breathing. Her pulmonary function test, chest x-ray and electrocardiogram were normal. He saw no rash, and detected no mass or tenderness in her abdomen. Her methacholine provocation test was negative, indicating that she did not have reactive airway disease. In sum, he saw no evidence of any permanent lung or skin injury. Dr. Bates was unsure whether her

continued symptoms were a sensitivity she had developed to the varnish room atmosphere or whether it simply was a an emotional reaction.

On January 11, 1999, Dr. Knowles diagnosed Claimant as having a “panic attack related to chemical exposure.” He found this again, along with anxiety and post traumatic stress disorder, when examining her on January 26, 1999. Dr. Melanie Risinger made a diagnosis of panic disorder without agoraphobia after seeing Claimant on February 1, 1999.

When Claimant saw Dr. Knowles on March 11, 1999, she complained of a swollen neck. On March 23, she sated that her “thyroids are hurting, cannot swallow.” A video esophagram and barium swallow were conducted on April 15, 1999. No abnormalities or obstructions were found. When the test was performed again in June 2000, some swallowing and aspiration problems were found.

On April 29, 1999, Dr. Knowles wrote the following to Claimant’s then-counsel:

[Claimant] does have some problems with anxiety which she was treated for prior to her chemical exposure. She did have a frightening experience with the chemical exposure. The chemical exposure did cause some residual problems with Ms. Wadley, but I believe these problems are due to a post-traumatic stress type problem rather than a physical deformity from the chemical. This does not mean that her symptoms are fake, they are very real. I believe with proper psychiatric counseling and appropriate medication she could be rehabilitated to rejoin the work force.

Her thyroid was found to be abnormal after the incident, but to my knowledge was not tested prior to her chemical exposure. I do not know whether [or] not her hypothyroidism was caused by the chemical exposure. I do not think it is related, but I do not know for sure.

In a similar letter dated July 10, 1999, Dr. Knowles stated that while Claimant did not have complaints or diagnoses of hypothyroidism or seizure disorder prior to the September 15,

1998 incident, she has those diagnoses now. But he added that “I do not think the exposure to heated epoxy caused [Claimant’s] seizure disorder or her hyper [sic] thyroid disorder” Dr. Knowles in a December 1, 1999 letter indicates that he is treating Claimant for a seizure disorder.

The records introduced by Claimant at the hearing includes a document entitled, “REASONALBE [sic] DEGREE OF MEDICAL CERTAINTY QUESTIONNAIRE,” signed by Dr. J. Dan Moon. Therein, he opines that Claimant has a seizure disorder “caused by exposure to chemicals at work.” However, there is no documentation in the record concerning Dr. Moon’s examination or treatment of Claimant.

From October 7-10, 2002, Claimant was evaluated at the University of Arkansas for Medical Sciences. During her stay, Claimant had three episodes. Dr. Robert L. Archer observed one and described it as follows:

I witnessed supposedly one of her spells while the electrodes were being put on (the patient complained of after smell). It started with a dry cough, gag, but did not vomit, complained of swelling of the throat (no upper respiratory noises, clear lungs on auscultation). Closed her eyes and had two middle fingers on the left side flexed and finger number 1, 2, 5, extended. I was able to arouse her multiple times very easily and actually talk to me. This lasted 15 minutes and the patient went to sleep afterwards.

Claimant was admitted for video EEG monitoring. However, no electrode abnormalities were found that correlated with the episodes Claimant presented with, which were also described in the records. On the last night of the monitoring, two sharp waves were seen over the left anterior quadrant (left fronto-temporal area). Also, excessive bilateral slowing was noted. Dr. N. Haddad wrote

In brief, the above described spells are not of epileptic nature. However, because of the presence of the rare left fronto-temporal sharp waves, the co-existence of non-epileptic and genuine epileptic seizures cannot be ruled out, but no genuine

epileptic spells were recorded during this period. Otherwise, there is evidence also of a mild to moderate, non-specific diffuse disturbance of cortical activity (because of the excessive bilateral slowing).

Throughout 2003 and 2004, Claimant presented on multiple occasions to the McCrory Health Center, complaining of various pains in various parts of her body and skin irritation. She was found to be flushed, and on December 22, 2004, had mouth ulcers, for which she received a dental referral.

On November 28, 2003, her barium enema came back normal, but an upper GI series showed "marked gastroesophageal reflux."

Claimant saw Dr. Reid Thomas in 2006 on various occasions for various complaints. Her x-ray came back as normal (with the exception of a fracture of her left clavicle) on June 14, 2006. Throughout this time, Dr. Reid's notes never document any rashes, burns or ulcers. He did treat her for, inter alia, GERD, depression/anxiety and a seizure disorder; and on September 20, 2006, treated her for an insect bite that caused swelling in her hands and mouth as well as the site of the injury.

ADJUDICATION

A. Compensability

A threshold matter is what standard or standards apply here. If any of Claimant's alleged injuries constitute an occupational disease, Ark. Code Ann. § 11-9-601(e)(1) (Repl. 1996) applies. That provision, as it existed at the time at issue here, required that the occupational disease be proven by clear and convincing evidence.

However, that is not the applicable provision. Under § 11-9-601(e)(1)(A), an "occupational disease" is defined as "any disease that results in disability or death and arises out of an 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.” In setting this apart from an accidental injury, the Arkansas Court of Appeals has stated: “Although our Act does not define the distinction between ‘accidental injury’ and ‘disease,’ diseases are generally gradual rather than sudden in onset.” *Hancock v. Modern Indust. Laundry*, 46 Ark. App. 186, 188, 878 S.W.2d 416 (1994)(holding that it was error for the Commission to characterize as an occupational disease an injury that “resulted from a single injurious exposure and was sudden in its onset”). By the same token, the injuries here were alleged to have resulted from Claimant’s alleged exposure to a unique occurrence—the burning epoxy, not an ongoing exposure to the ordinary fumes in her workplace.

Arkansas Code Annotated § 11-9-102(4)(A) (Repl. 2002), which I find applies here to all but her alleged heart, lung and mental injuries, defines "compensable injury":

(i) An accidental injury causing internal or external physical harm to the body . . . arising out of and in the course of employment and which requires medical services or results in disability or death. An injury is "accidental" only if it is caused by a specific incident and is identifiable by time and place of occurrence[.]

The element “arising out of . . . [the] employment” relates to the causal connection between the claimant’s injury and his or her employment. *City of El Dorado v. Sartor*, 21 Ark. App. 143, 729 S.W.2d 430 (1987). An injury arises out of a claimant’s employment “when a causal connection between work conditions and the injury is apparent to the rational mind.” *Id.*

A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4)(D) (Repl. 2002). "Objective findings" are those findings which cannot come under the voluntary control of the patient. *Id.* §

11-9-102(16). If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing compensability, compensation must be denied. *Mikel v. Engineered Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997); *Bivens v. Conagra Poultry*, 2006 AWCC 57, Claim No. F212239 (Full Commission Opinion filed March 26, 2006).

Claimant has alleged that her lungs and heart valves were injured by the heated epoxy exposure. Section 11-9-114(a) provides that, inter alia, cardiovascular, coronary, pulmonary or respiratory injuries are “a compensable injury only if, in relation to other factors contributing to the physical harm, an accident is the major cause of the physical harm.” In addition, § 11-9-114(b)(1) states that such injuries

shall not be deemed to be a compensable injury unless it is shown that the exertion of the work necessary to precipitate the disability or death was extraordinary and unusual in comparison to the employee’s usual work in the course of the employee’s regular employment or, alternatively, that some unusual and unpredicted incident occurred which is found to have been the major cause of the physical harm.

Under § 11-9-114(b)(2), physical or mental stress cannot be considered when determining whether the claimant has met his or her burden of proof. I find that § 11-9-114 applies here as well.

Claimant in her contentions that are part of Commission’s Exhibit 1 alleged that as a result of being exposed to heated epoxy at the Respondent employer’s place of business on September 15, 1998, she received compensable injuries to her (1) lungs, (2) eyes, (3) skin on upper extremities, and (4) the inside of her mouth. As set out above, at the beginning of the hearing the parties were afforded an opportunities to amend their contentions as well as the stipulations and issues. None were offered to change any of the

above. However, Claimant later in the hearing through her testimony and/or through her attorney argued that the exposure also led to (5) burns to her scalp, face, ears, and neck; (6) burns to the inside of her nose; (7) problems with her urethra; (8) seizures; (9) GERD; (10) heart valve problems; and (11) Post Traumatic Stress Disorder. Respondents did not object to these new allegations of injury. Hence, they will be considered. See *Mitchell v. Little Rock Electrical Contractors, Inc.*, ___ AWCC ___, Claim No. F406114 (Full Commission Opinion filed November 30, 2006)(Commission considered new issue raised a hearing to which respondents did not object). Cf. *Singleton v. City of Pine Bluff*, 2006 AWCC 34, Claim No. F302256 (Full Commission Opinion filed February 23, 2006)(improper for administrative law judge to address issues not raised at hearing), *rev'd on other grounds*, No. CA06-398 (Dec. 6, 2006)(unpublished).

After considering the evidence introduced at the hearing, both testimonial and documentary, I conclude that Claimant has proven by a preponderance of the evidence that she has proven certain compensable injuries in that she was exposed to a heated epoxy while working for Respondent employer on September 15, 1998, that resulted in certain injuries that necessitated treatment. The medical evidence, supported by objective findings, shows that those injuries were to her lungs, skin and eyes. Dr. Yates diagnosed Claimant with reactive airway disease and irritative bronchitis based upon, inter alia, his examination of her lungs and the presence of a productive (yellow and green sputum) cough the day after the exposure. That the respiratory irritation was caused by the epoxy is supported by the MSDS provided by Kemper to Dr. Bates. I find that even though Claimant had a previous diagnosis of bronchitis, it is clear from the evidence adduced that the exposure to the heated epoxy was the major cause of the reactive airway disease

under Ark. Code Ann. § 11-9-114(a), and that the exposure to the heated epoxy was an “unusual and unprecedented accident” under § 11-9-114(b)(1). *Cf. Barnett v. Daniel*, 2001 AWCC 124, Claim No. E600078 (Full Commission Opinion filed May 25, 2001).

The medical records document that Claimant’s skin on her neck appeared erythematous on the day after the epoxy exposure. And Dr. Yates in his September 21, 1998 notes states that “most of the erythema [was] resolved,” indicating that some was still present.

As for her eyes, when Claimant presented to Dr. Yates on September 18, 1998, she stated that “[h]er eyes are still burning” Yates noted from his examination that “The eyes show the conjunctiva injected.”

The medical records also document that on September 25, 1998, after she returned to work for two or three days and was exposed to fumes from her work area, she returned to Dr. Yates. His examination revealed skin irritation on her neck, upper back and chest, and to a lesser degree on her face and upper arms. He also found mouth ulcers, for which he prescribed Lidocaine.

However, Claimant has only argued that she was injured as a result of her September 15 exposure to the heated epoxy, an unusual event. Nowhere has she attempted to tie any injuries to her return to work thereafter. For me to do so would require that I act *sua sponte* to broaden the issue before me. This I cannot do. *See Singleton, supra*. Hence, despite their mention here, I am constrained to find that Claimant has not met her burden of proof of establishing by a preponderance of the evidence compensable injuries to the inside of her mouth or to the skin on her face and upper arms.

As for the balance of her alleged injuries, Claimant has failed to meet her burden of proof. Claimant's medical records contemporaneous with the epoxy exposure do not document any burns to Claimant's scalp and ears. While Claimant and the other witnesses at the hearing testified as to the presence of blisters inside of her nose following the exposure, the medical records do not support this. There is also nothing in the record that leads me to relate Claimant's alleged urethra or heart valve problems to the chemical exposure—and certainly nothing that under § 11-9-114(a) would establish the epoxy exposure as the major cause of her heart problems.

Claimant and both of her witnesses gave emotional testimony at length as to Claimant's problems with seizures since the epoxy exposure. However, while I believe they are sincere in their subjective belief of a relationship between Claimant's exposure and this condition, it does not enable her to meet her burden of proof. Dr. Knowles opined that the seizure disorder was not tied to the epoxy exposure. I note that Dr. Moon stated the opposite opinion. But I do not credit his testimony due to a complete lack of evidence as to whether and to what extent he examined and treated Claimant. There simply is no basis in the record for his opinion. The above, when arrayed against Dr. Haddad's 2002 report following an extended EEG study of Claimant that was inconclusive at best as to whether she was experiencing seizures at all, leads me to determine that Claimant has not established either the existence or causation of seizures by a preponderance of the evidence. Because of this finding, I also find that Claimant cannot show that her breaking her clavicle was a compensable consequence (Claimant has alleged it was due to a seizure).

Claimant also alleges that the chemical exposure caused her to develop GERD. But the record is devoid of evidence tying such a condition either chronologically or otherwise to the epoxy exposure.

The final injury of which Claimant complains was caused by the epoxy is Post Traumatic Stress Disorder. As discussed above, Dr. Knowles on January 11, 1999 diagnosed Claimant as having a “panic attack related to chemical exposure.” He found this again, along with anxiety and post traumatic stress disorder, when examining her on January 26, 1999. His letter on April 29, 1999 to Claimant’s then-counsel contains his opinion that she is suffering from a “post-traumatic stress type problem” due to the September 15, 1998 incident. Dr. Risinger made a diagnosis of panic disorder without agoraphobia after seeing Claimant on February 1, 1999.

In determining whether the alleged PTSD is a compensable injury, the applicable standard is Ark. Code Ann. § 11-9-113(a) (Repl. 2002):

(a)(1) A mental injury or illness is not a compensable injury unless it is caused by physical injury to the employee’s body, and shall not be considered an injury arising out of and in the course of employment or compensable unless it is demonstrated by a preponderance of the evidence; provided, however, that this physical injury limitation shall not apply to any victim of a crime of violence.

(2) No mental injury or illness under this section shall be compensable unless it is also diagnosed by a licensed psychiatrist or psychologist and unless the diagnosis of the condition meets the criteria established in the most recent issue of the Diagnostic and Statistical Manual of Mental Disorders.

Nothing in the record indicates that Dr. Knowles is a licensed psychiatrist or psychologist. His letterhead indicates that he is a “D.O.,” or doctor of osteopathic medicine. Similarly, the only indication in the record of Dr. Risinger’s credentials is that her letterhead indicates that she is an M.D.

Under § 11-9-113(a)(2), the PTSD diagnosis must meet the criteria in the DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS, FOURTH EDITION (hereinafter “DSM-IV”), which is the most current issue of that manual. Dr. Knowles does not specify if Claimant’s alleged PTSD is acute or chronic, or whether it is with delayed onset, which the manual requires. See DSM-IV at 468. Moreover, only Dr. Risinger’s February 1, 1999 evaluation follows the five-axis model under the DSM-IV. However, the diagnosis she gave was for 300.01 Panic Disorder Without Agoraphobia, which Claimant has not alleged; it was not 309.81, Posttraumatic Stress Disorder, which Claimant has alleged.

When the above is considered along with the fact that the evidence shows that Claimant received a PTSD diagnosis following examination at the North Arkansas Human Services System on November 17, 1995—substantially preceding the heated epoxy exposure—I cannot find that Claimant has met her burden of proof of establishing PTSD as a compensable injury here.

B. Temporary Total Disability

Claimant asserts that she is entitled to temporary total disability benefits from her last date of work, September 15, 1998, to an indeterminate future date. Claimant’s compensable injuries to her lungs and skin are unscheduled, while the eye injury is scheduled. See *id.* § 11-9-521 & (c). An employee who suffers a compensable unscheduled injury is entitled to temporary total disability compensation for that period within the healing period in which he or she has suffered a total incapacity to earn wages. *Ark. State Hwy. & Transp. Dept. v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981). The

healing period ends when the underlying condition causing the disability has become stable and nothing further in the way of treatment will improve that condition. *Mad Butcher, Inc. v. Parker*, 4 Ark. App. 124, 628 S.W.2d 582 (1982). As for scheduled injuries, a claimant is entitled to temporary total disability benefits “during the healing period or until the employee returns to work, whichever occurs first” Ark. Code Ann. § 11-9-521(a) (Repl. 2002). See *Wheeler Const. Co. v. Armstrong*, 73 Ark. App. 146, 41 S.W.3d 822 (2001). Also, a claimant must demonstrate that the disability lasted more than seven days. Ark. Code Ann. § 11-9-501(a)(1) (Repl. 2002).

The medical records reflect that Dr. Yates released Claimant to return to work on October 9, 1998. That was the day he found her examination to be “completely normal.” Based upon my review of the evidence, I find that Claimant’s healing period ended on that date. I further find that, based upon Claimant’s compensable injuries as set forth above and the treatment she was undergoing during this time, Claimant has not established that she was totally incapable of earning wages during any portion of her healing period. Thus her claim for temporary total disability benefits regarding her lung and skin injuries must be denied.

As for her eye injury, the evidence shows that on September 21, 1998, Claimant stated to Dr. Yates that she desired to return to work. The record of Claimant’s examination by Dr. Yates on September 25 indicates that at that time she had been back to work for two or three days. Moreover, both Claimant and Ms. Gaskin testified that Claimant went back to work for Respondent employer shortly after the accident, if only for a short time. Claimant in her contentions has argued that September 15 was her “last day of work”; but in light of the above evidence, I find that she returned to work less than seven

days after her injury, foreclosing her claim for temporary total disability benefits for her eyes.

C. Permanent Partial Disability

Claimant also alleges that she is entitled to permanent partial disability benefits. An injured worker has the burden of proving by a preponderance of the evidence that they are entitled to compensation for a permanent physical impairment. *Jarrett v. Sol Alman Co.*, 2003 AWCC 101, Claim No. E904563 (Full Commission Opinion filed May 30, 2003). Under Ark. Code Ann. § 11-9-102(4)(F)(ii)(a) (Supp. 2005), “Permanent benefits shall be awarded only upon a determination that the compensable injury was the major cause of the disability or impairment.” A “major cause” is defined as more than fifty percent (50%) of the cause, and a finding of major cause must be proven by a preponderance of the evidence. *Id.* § 11-9-102(14).

It is the duty of the Commission to determine whether the injury caused any permanent anatomical impairment and, if such impairment did occur, the Commission must determine “the precise degree of anatomical loss of use.” *Jarrett, supra* (citing *Johnson v. General Dynamics*, 46 Ark. App. 188, 878 S.W.2d 411 (1994); *Crow v. Weyerhaeuser Co.*, 46 Ark. App. 295, 880 S.W.2d 320 (1994)). Pursuant to Ark. Code Ann. § 11-9-522(g), the Commission has adopted the Guides to the Evaluation of Permanent Impairment, Fourth Edition, for assessing anatomical impairment, “exclusive of any sections which refer to pain and exclusive of straight leg raising tests or range of motion tests when making physical or anatomical impairment ratings to the spine. See AWCC R. 099.34. As part of its duty to translate medical evidence into an appropriate impairment finding using the AMA Guides, the Commission may assess its own impairment rating using

the Guides as opposed to relying solely on its determination of the validity of ratings assigned by physicians. *Polk County v. Jones*, 74 Ark. App. 159, 47 S.W.3d 904 (2001).

The medical record evidence adduced at the hearing does not reflect that any impairment rating was ever assigned to Claimant. But that makes sense in light of the fact that the evidence shows that Claimant's compensable injuries to her eyes, skin and lungs as a result of the September 15, 1998 epoxy exposure resolved shortly thereafter. With regard to her eyes, I find that while Claimant was able to prove by a preponderance of the evidence that exposure to the epoxy irritated them, she did not prove any permanent damage. As early as October 2, 1998, her eyes appeared to have improved. Dr. Yates' notes for that date state that, despite Claimant's complaints about her eyes, her conjunctiva and sclera were normal. When Claimant was referred to Dr. Lowery, an ophthalmologist, on October 8, 1998, his examination found that while exposure to the chemical had undoubtedly irritated Claimant's eyes, it caused no permanent damage. A Schirmer test revealed that Claimant had severe dry eye syndrome, a condition that Dr. Lowery opined predated the epoxy exposure. As for her complaints about loss of vision, while Dr. Lowery stated that he found her uncorrected vision to be 20/60 in the right eye and 20/50 in the left and was able to correct her vision to 20/20, bilaterally, nothing in the medical evidence ties this condition to the September 15, 1998 incident.

Claimant's skin irritation later appeared in her medical records. But this was well after the time during which multiple physicians, including Drs. Yates, Knowles and Bates, had examined Claimant and had found no injury.

This is also the case with the respect to Claimant's lungs. It is apparent that the reactive airway disease had resolved on or before October 9, 1998. Any difficulties

Claimant experienced in her lungs after that time, I find, are just as much or more likely to relate to her pre-existing bronchitis and smoking habit. In sum, Claimant has not proven by a preponderance of the evidence that she is entitled to a disability rating of any degree.

As for the wage-loss component of permanent partial disability, the Commission in *Boyd v. St. Bernard's Med. Center*, 2006 AWCC 121, Claim Nos. F010619 & F204234 (Full Commission Opinion filed July 11, 2006), stated the applicable standard:

Under our Workers' Compensation laws and cases interpreting that law, an employee must prove by a preponderance of the evidence that she sustained some degree of permanent anatomical impairment as a result of her compensable injury before she can show entitlement to wage loss benefits in excess of her permanent physical impairment. *Needham v. Harvest Foods*, 64 Ark. App. 141, 987 S.W.2d 278, (1998); *Wal-Mart Stores, Inc. v. Connell*, 340 Ark. 475, 10 S.W.3d 727 (2000).

Because, as discussed above, Claimant has not proven that she “sustained permanent physical impairment as a result of her compensable injury,” she is not entitled to wage-loss consideration.

D. Rehabilitation

With respect to this issue, Claimant in her contentions asserts only “that she is entitled to rehabilitation.” This is governed by Ark. Code Ann. § 11-9-505(b)(1) (Repl. 2002), which provides:

In addition to benefits otherwise provided for by this chapter, an employee who is entitled to receive compensation benefits for permanent disability and who has not been offered an opportunity to return to work or reemployment assistance shall be paid reasonable expenses of travel and maintenance and other necessary costs of a program of vocational rehabilitation if the commission finds that the program is reasonable in relation to the disability sustained by the employee.

Claimant is not entitled to relief in the form of this type of compensation because, as set forth above, she has not established her entitlement to permanent disability benefits.

E. Medical Benefits

Claimant argues that she is entitled to additional medical benefits. Section 11-9-508(a) provides that 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 at the hearing, and which I accept, the Respondents paid for treatment to Claimant through December 17, 1998. However, as discussed above, each and every one of Claimant's compensable injuries had resolved well prior to that date. Consequently, she is not entitled to additional medical treatment.

G. Attorney's Fee

The parties stipulated, and I accept, that Claimant's entire claim was controverted. Claimant's attorney is thus entitled to a fee on all additional benefits to which she was entitled from September 15, 1998 forward, irrespective of whether some of those benefits have already been paid. *Cleek v. Great Southern Metals*, 1999 AWCC 38, Claim No. E413651 (Full Commission Opinion filed February 10, 1999). Because Claimant's injuries occurred before July 1, 2001, her attorney is entitled to the maximum statutory attorney's

fee on all benefits awarded herein, one-half of which is to be paid by Claimant and one-half to be paid by the Respondents in accordance with Ark. Code Ann. § 11-9-715 (Repl. 1996); and *Death & Permanent Total Disability Trust Fund v. Brewer*, 76 Ark. App. 348, 65 S.W.3d 463 (2002).

CONCLUSION AND AWARD

The Motion to Quash the subpoena duces tecum to DMI-Arkansas is denied.

The record shall not be left open to allow Claimant to present evidence related to the material safety data sheets subpoenaed from movant DMI-Arkansas.

Attorney Kevin Odum failed to appear at the hearing to present evidence in support of his claim for a \$350 attorney's lien. The claim is thus denied.

Claimant has proven by a preponderance of the evidence that she sustained compensable injuries to her skin, eyes and lungs as a result of the September 15, 1998 heated epoxy exposure. All of her other compensability arguments, along with her claims for temporary total disability benefits, permanent partial disability benefits, rehabilitation benefits, and additional medical treatment are denied and dismissed.

The Claimant's counsel, the Hon. R. Theodor Stricker, is hereby awarded the maximum attorney's fee on all benefits awarded herein, pursuant to Ark. Code Ann. § 11-9-715 (Repl. 1996).

IT IS SO ORDERED.

Hon. O. Milton Fine II
Administrative Law Judge