

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F503962

VINCENT W. WARE, EMPLOYEE	CLAIMANT
KEMLITE CO./CRANE, EMPLOYER	RESPONDENT
ACE AMERICAN INS. CO., CARRIER	RESPONDENT

OPINION FILED JANUARY 12, 2007

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on October 20, 2006, at Jonesboro, Craighead County, Arkansas.

Claimant represented by the HONORABLE R. THEODOR STRICKER, Attorney at Law, Jonesboro, Arkansas.

Respondents represented by the HONORABLE E. DIANE GRAHAM, Attorney at Law, Ft. Smith, 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 June 27, 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 regarding the afore. The Pre-hearing Order is herein designated a part of the record as Commission Exhibit #1.

The testimony of Mr. Vincent Ware, the claimant; Ms. Linda Irving; Ms. Diane Crockett;

Mr. Marshall Tyson; Mr. Mark Emory; Mr. Tony Hanusowski; and Dr. David Hewitt; coupled with the September 18, 2006, deposition of Dr. Larry Felts, along with medical reports, photographs, and other documents comprise the record in this claim.

DISCUSSION

Vincent Wayne Ware, the claimant, with a date of birth of January 27, 1970, is a high school graduate, testified that he commenced his employment with respondent in 1999. Mr. Ware acknowledged that his employment date could have been May 4, 2000, as reflected in documents completed by respondents.

Claimant's testimony reflects that he performed numerous jobs throughout the plant during his employment with respondent-employer. Claimant started his employment with respondent-employer as a front utility and thereafter an extra back room operator. In describing his duties as an extra back room operator claimant testified:

It is like cleaning out the hose with the fiberglass. And cleaning out the hose with the fiberglass, sweep and clean up, I'd break out the mat room operators when they'd take lunch, watch them. What it is, the fiberglass goes down into the, cuts the glass up. We have cutters in there. And it goes down the line, and you have to watch it. (T. 16).

Claimant further testified, regarding his job duties:

Yes. Mine was like, you know, at the end of my shift I would go inside these holes where you had to sweep out the fiberglass into a dumpster. It's all in the air as far as in the hole. And we had to decide who would have to go in and sweep it out, and go into the dumpster to, you know, clean it out. And then we'd also have to clean filters and change them out. (T. 16-17).

Claimant's next job was as an impregnator. In describing the afore, claimant testified:

Lab work, back in the back, went in and out messing with the gel coat and the resin coming out the resin in the back and went in and out

with the resin. And they had fingers went in and out, like I said if a job changes or fluid changes. And you had to clean your fingers, every job change you had to clean your fingers with the acetone. You had a full barrel, you open the lid and throw that into it and clean it with a rag with acetone. (T. 17).

The fingers are actually four or five pieces of metal that are parts of a machine working with the resin. Claimant explained:

No. I'm talking about your fingers, they call them fingers. It's like, you know, it's in the line. You have four pieces of metal or something or it could be five, you know. You pull these out. And it's got resin on there or the gel coat and you put them, you know, when you're done with them, you lay them in this acetone. And you have to clean all that. You know, you've got to get all that stuff off and clean. (T. 17).

Claimant concedes that he was furnished gloves while performing the afore job, however he denies that he was provided a respirator. Claimant asserts that the respirators were upstairs. The testimony of the claimant reflects:

No. They didn't furnish them [respirators] to me. They would, you know, if a fire broke out or something, I mean this has happened to me one time a fire broke out. I put out a fire. I got the respirator or the respirator after the fire. Well, that ain't going to do me no good then. (T. 18).

Claimant maintains that while the plant was ventilated, the fumes from the acetone and other chemicals were very strong. Claimant estimates that he worked the impregnator job for three to six months.

Claimant testified that while performing the impregnator job he was also exposed to resin and gel coat. Claimant's testimony reflects, regarding the chemicals that were present:

CHP, ESP. This is how I got, see you make - - there's holes up there you had to change out. And that's our job. We changed it out. Well, I didn't know there was a leak and it was above my head. I'm busy working. It leaked in the back of my head. It burned all the back of my head and down my neck. My supervisor at that time on the third

shift was Jimmy Prince. I didn't know it did, but you know, it's above my head. It leaked down the back of my head. It burned the back of my head, and I was itching. And I told Jimmy Prince I said, I am itching back there, what is back there? And he looked and he said you're red. He said - - and he told me immediately to go get a shower. And I had to leave my work area and go get a shower, and it was burnt. And what it was, there was a leak. And, you know - -

Yes. It's a very strong CHP and ESP is a very strong chemical. If you get it on you, it will burn you. That is something you are taught that you cannot get on you. If it does, it will burn you. (T. 19-20).

Claimant's testimony reflects that after working the impregnator job he worked a lot of front utility:

Well, the front utility is where, you know, you take the, you know, you take it to the cut down, you run a pool, it just folds up the panel. And if there's any, you know, B grade or whatever, you roll that up on the line. And you tape it up, you know, if it's bad or whatever. Because if you get a bunch of knots into the pallet, and they roll it up. What we do is cut that out to the size of what another company might need. But the good part, which we call A grade, and whatever sizes they need, we put that on the skid, and cut it down at the cut down table. (T. 20-21).

Claimant also performed the job of a shear operator, which he described:

The sear operator, it was involved, well we had to, there was a, had to change out the roll to film. We had to move out with this computer, it went in and out on the computer punched in. Now if anything was bad and to the back, it would come to front. And then we had a mess. Okay then I would have to clean it off with acetone. (T. 21).

Claimant maintains that he was not instructed in any precautions when using the acetone.

Claimant asserts that he was furnished cotton gloves, however the acetone would soak through them to his skin.

Claimant asserts that his jobs at respondent-employer exposed him to chemical vapors.

In identifying the exposure points, claimant testified:

Yeah. The whole line, the whole, well you've got a, you know, you've got from shears on down. You know, shears on down will expose, and the impregnator was extremely bad. That was the real hard chemicals. When you worked in the back, that was the main chemicals back there. (T. 23).

Claimant asserts that he was exposed to acetone, resin, gel coat, CHP and ESP. Regarding his knowledge

of CHP claimant testified:

I never noticed. I just know it was a bad chemical because if you got it on your skin, now it didn't burn with the rubber gloves that we had. You know, we had to wear rubber gloves because if you got that on your skin, it's going to burn you. That's what burnt the back of my head when I didn't know there was a leak up above me, and it got the back of my head. (T. 23).

The testimony of the claimant reflects that he was directed to wear rubber gloves when pour the CHP into a bucket. Claimant maintains that he was exposed to the chemicals used in respondent-employer's production and cleaning on a daily basis, however was not furnished a respirator.

Claimant testified that the resin and gel coat stung when contact was had with the skin.

Claimant asserts that during his employment with respondent-employer he was involved in two or three fires, however one was "real bad". (T. 26). Claimant's testimony reflects:

I can't remember the exact date on this. Like I said, it's hard for me to remember because there's so much stuff happened. I worked there five years. I can't give you the exact date on any of these. But they had numerous fires out there. And all I can tell you is tell you I was exposed - - a fire broke out in the back, and smoke started coming up and this is on line five. And we knew what was going on. Now Linda Irving at that time was, I can't recall if she was coming there as a day inspector or lead person. I think she was a lead person. She was kind of freaking out, you know, we've got a fire. We've got to get this out, you know. And she told me to get a fire extinguisher and go, you know, where I was at at the shear. I worked the shear at that time. And I went back there and Jason Parker was rear, on line eight. He's having problems trying to put it out. I was on the other side, you know, trying to put it out, too. He was spraying the fire extinguishers inside the ovens. It caught on fire inside the ovens. All this

smoke coming out, I'm trying to cover myself with my shirt over my nose.

Yeah. I mean you have all this smoke, black smoke. Yeah. I mean it's you know, the best you could do is try to use your shirt and then try to put the fire out. I mean. We finally got it out and we still had the smoke there. He was on the other side. I was on one side. We just kept spraying on the other side because that's where the big fire was. And I was helping him, we was both putting fire extinguishers in there. And we finally got it out. And what had happened the resin got in there and some of the film or something got on it and caught on fire. (T. 27-28).

Claimant asserts that because the fire was so bad with black smoke he thought that supervisory personnel would have to call the fire department. Regarding the impact of the smoke from the fire on him, claimant testified:

It got me sick. I mean all this stuff, I blew out black stuff, you know, like it said I'm blowing out black stuff. It just caused me to be very drowsy, a little nervous, you know. All this stuff was, you know, it just stunk so bad. And I just had to, which the plant manager and all that come out and I had my shirt trying to keep over me. Right after, Lawrence Cox come up with a respirator. Well, you know it's too late now. He told me to keep it. (T. 28-29).

Claimant acknowledge that he did not go to the doctor, hospital or seek medical treatment following the fire. Regarding the duration of his sickness from the fire, claimant's testimony reflects:

Days. Just, you know, really upset. And then, you know, as far as I was really having problems. I told my wife I'm blowing out black stuff out of my nose. I'm having real bad sinus problems. It was to the point where I make a little blood, black. When I got me a tissue I told my wife, you know, blowing my nose, and black would just come out of my nose.

It was hard sometimes. Yeah. I man I could breathe, but sometimes it was very hard. That's the reason why I had to blow all the time to try to get some of that stuff out. This is not only as putting the fire out. When I got the fiberglass out I was also getting black stuff out of my nose. So I was having problems with this for a while. (T. 29-30).

While he is unable to remember the year of the first fire, claimant provided the following testimony regard the second fire that he was exposed to at respondent-employer:

Well, the one on line eight, that was on third shift. We come off - - I work days. The line eight fire happened on the third shift. I think it was getting very close to the end of third shift. The fire, we had to come out there and put it out. We come in, you know, in this. The line's all burnt up. It's shut down. Okay. I work on line five. I was a shear operator at that tome. Well, what the do is rotate to help, you know, to give them a break through that line. You know, clean it up. I had to get acetone and do all this, clean it off. You know, clean the line up and fix it. So what we would do is if they had a shear operator on line eight, you know, I let him run my line and then I'd go over there and help clean. We would swap. You see what I'm saying?

So I helped clean the line, plus they worked us seven days a week. And then when you work that Sunday, that's where we worked was on line eight. (T. 31-32).

Job tasks that the claimant maintains that he performed in the aftermath of the fire include sweeping, cleaning with acetone, and painting. (T. 33). Claimant testified that while rubber gloves were furnished in the clean up respirators were not. Claimant estimated that the line was down for two to three weeks following the fire.

The fire on line eight occurred on February 18, 2004. Claimant asserts that shortly after the clean up from the fire on line eight he begin to have some vision problems. Claimant testified that he was having problems with his feet and was out for a period of time receiving medical treatment. The afore occurred after February 18, 2004. Claimant recalls returning to work for a short period of time:

I think I recall I come back two days. And I started getting sick again. And I told them, you know, told me that I needed to - - well, we called my plant supervisor. And told me, you're shaking. And the heat was out there so bad and, you know, fumes. And, you know, I just couldn't take it.

I left. No. I take that back. Somebody drove me. They would not let me leave on my own. They said - - I was going to leave by myself. They said no. I was shaking. The plant supervisor said Vincent, we cannot let you leave. You are shaking. I said I didn't really know I was. I knew something was wrong because I was getting real dizzy. And they made a girl drive me home from the plant to my home. And then that's when I went and seen a doctor. I told them I was still having problems. (T. 38-39).

The claimant testified that he was seen by Dr. Hoke and relayed a history of extreme dizziness.

Claimant testified that he was provided Meclizine for dizziness and was referred to Dr. Felts by Dr. Hoke. Claimant's testimony reflects that Dr. Felts is a psychiatrist.

Claimant testified that he continues to see Dr. Felts, explaining:

For my nervous condition and my dizziness. And as far as, you know, if I have extreme dizziness and I see him. He controls my dizziness because I, my nerves are real bad. Sometimes I shake, you know. He gives me medicine to control that dizziness. (T. 41).

Claimant testified that he is blind in one eye from a stroke to the eye. Claimant noted that toward the end of his employment with respondent-employer he started noticing vision problems in the form of seeing spots. Claimant testified regarding the onset of his vision difficulty:

Right after shortly when, at the end of my time. Like I said, it was right there at the end. After the fires I started having little problems with the vision. But it wasn't real bad. Like I said, you know, when I tried to go back to work, I knew right then I couldn't do it. I was having too many problems as far as nervous, shaking, and the heat, and smell, you know made me sick.

Yes. Now I'm not, you know, I was not just completely blind. It was just like a little blur. I kept the eye wash that they give me, that somebody give me where I worked, so I used it a lot with my eyes. It cleans stuff out of your eyes and whatever. I had gotten stuff in my eyes before up there. (T. 42).

Claimant noted that the eyewash that was furnished helped the irritation in his eye but not the cloudy vision.

Claimant testified that he went in and talked to Dr. Hoke about his cloudy vision and sinus problems. Claimant was not referred to an eye specialist at the point. Claimant's testimony reflects the point in time he realized that he had a significant problem regarding his eye:

Well, this is when - - because of when I had the stroke, it blinded me in my eye. So I had to go into the hospital. So they had to get a eye specialist up there. Now I don't know who done that. I was in the hospital. I don't know. I mean all these doctors come up there. I, you know, I was in the hospital. I don't know. (T. 43).

Claimant testified that he was seen by Dr. Joseph George, an eye specialist, while he was in Regional Hospital, and was referred to a physician in Memphis. Claimant asserts that neither the eye specialist in Jonesboro or Memphis was able to provide treatment to help his vision complaint.

Claimant testified that he is blind in his right eye, which he attributes to a stroke that necessitate the initial hospital visit. Regarding the medical treatment that was provided for the right eye claimant testified:

No. Well, I mean I had medical treatment as far as, I think they, I recall giving men some, you know, I usually just used a eye drop. There was pretty much nothing they could do. They said it was blown. They said it was blown, or you know, we can't do nothing. (T. 46).

Claimant has limited vision in his left eye, explaining:

Well, I can see out of my left eye. It's the only thing I've got. And there's no guarantee that I will go completely blind, but you know. But I can see a little bit out of my eye. Now as far as, you know a long ways, I can't but, you know, it's a - -

A little bit. It's a little better since I take my medicine and all that, you know. But I still have problems there. It's just trying to get medicine to fix the problem. All the problems the I did have. It took

a little while. (T. 47).

The testimony of the claimant reflects that he can drive, although he usually lets his wife drive. Claimant concedes that he can drive “a little bit in Jonesboro”, however he does not attempt to drive in Memphis. (T. 47). Claimant noted that he can read signs.

Claimant testified regarding his knowledge of some psychiatric history in his family involving his brother:

Well, I know a little bit about it. Yes. I know they've had some stuff. They've had their own personal problems. But like I said, I was totally healthy before all this. I never was, not in that situation what they're in. If that's what you're referring to, no. What their's is is t-totally different from mine. (T. 49).

Claimant's testimony reflects that his father may have had a mental condition, schizophrenia:

Well, that is hearsay. At that time I didn't until, you know, and I told her the truth. I did not know this. Now I asked my wife about it when I got home. Was this his diagnosis because I really didn't know. And that's the truth. And she said that that was hearsay. (T. 49-50).

Claimant testified that he has been diagnosed with a “bipolar probably or also a nervous condition”. (T. 50). Claimant explained that he has difficulty thinking:

Sometimes. Sometimes for no reason, you know, like I said I can't remember these dates. You know, sometimes I mean it's hard to remember them days after all the stuff has happened. So it's all I can do is say, you know, that's happened. But I can't remember exact dates for a whole period of time. (T. 50).

Claimant denies having problems with his memory, dizziness, anxiety, or nervousness prior to his exposures in his employment with respondent-employer.

Claimant maintains that prior to commencing his employment with respondent-employer he was “very extremely healthy”, with 20/20 vision. Claimant testified regarding the nature of

the dust and particles that got in his eyes while sweeping:

Well, that could be, you know, like if you're sweeping up fiberglass or something that could be, you know there would be particles flying n the air. See what I'm saying? Because that fiberglass, you get it on the floor there, you know, that's going to kind of - - I don't know if you know about fiberglass. It's little bitty particles in the air. So that would cause you to, you know, to get particles to. (T. 51).

Claimant's testimony reflects that the only doctor he is now seeing in Dr. Felts. Claimant noted that the eye specialist did not schedule a return appointment. Claimant has been approved for and receiving Social Security disability for either two or three years. The testimony of the claimant reflects that he got Medicare in September 2006, although there is a \$124.00, deductible. (T. 55).

Claimant noted that during his employment with respondent he earned \$11.15, per hour for a 40-hour work week. The parties stipulated the amount of the claimant's compensation benefits rate.

The testimony of the claimant reflects that he was denied access to the MSDS books by respondent-employer. Claimant acknowledged that he never requested access to the MSDS when he was working for respondent-employer. (T. 81-82). Claimant maintains that while he was an employee of respondent-employer and receiving short-term disability benefits he was denied access to the MSDS .

On cross-examination, claimant acknowledged that at the time he went to the hospital for the central retinal artery occlusion, which resulted in blindness in his right eye, he had group health insurance which paid for part of his medical expenses. On March 12, 2004, claimant underwent surgery relative to his feet and had been off work on almost a month receiving short-

term disability benefits. On April 8, 2004, claimant presented to the emergency room relative to the central retinal artery occlusion. The emergency room records relative to the visit reflect a past medical history of anxiety attacks five years earlier. Claimant maintains that he was not aware that the afore past medical history was contained in the medical records. Claimant also disputes the accuracy of the April 8, 2004, emergency room medical records which reflects the he eye “felt normal’ prior to the date of the visit.

The claimant was seen by a neurologist, Dr. Cauli, during the April 8, 2004, admission. Claimant professed that he was unaware that Dr. Cauli indicated in his report that the claimant relayed transient visual loss in his right eye approximately five to eight years earlier for which he did not seek any medical advice. Further, claimant denies that he provided the afore history to Dr. Cauli. Additionally, claimant denies that he ever experienced transient visual loss in his right eye five to eight years prior to April 8, 2004.

Claimant concedes that while in high school he had some special classes in English subjects. Claimant acknowledged that his older brother has a mental illness for which he has been hospitalized. The medical records reflects that the claimant’s father was schizophrenic and committed suicide when the claimant was five years old. While the claimant testified that he was not aware the his father was schizophrenic, he was aware the he committed suicide. Claimant testified that he and his mother found the body of his father.

The injury log maintained by respondent-employer relative to its employees reflects that on May 11, 2001, the claimant got some trash in his right eye at 5:30 and the same was treated with eye wash. The injury log further reflects that on July 19, 2000, claimant got some CHP on his back from a leak. Claimant took a shower in the locker room and medicated cream was

applied to the area. Claimant acknowledged that he did not seek any kind of medical treatment following the incident:

I just kept the cream on there. My wife at that time was a nurse, so she got it for me. Like I said it was very irritated and red. So I just let her, you know. (T.62-63).

The records of respondent-employer reflect that a fire occurred at the plant on December 20, 2001, at 7:30 a.m., on line five. The records also reflect that fire occurred at the plant on February 18, 2004, when the claimant was not present at the facility. Claimant's testimony reflects that he has no recollection of any other fires. (T. 64). Claimant acknowledged that he did not go to the doctor for treatment as a result of his involvement in putting out the fire.

Claimant maintains that when he reported for work on February 19, 2004, following the February 18, 2004, fire on line eight, at some point during the days after that he switched off with line eight production. While he estimated that line eight was down for two to three weeks as a result of the fire, claimant acknowledged that he could be wrong about the duration.

Claimant acknowledged that while he was off work following the central retinal artery occlusion, which resulted in blindness in his right eye, he continued to draw his short-term disability benefits through respondent-employer. The record reflects the presence of a Crane Corporation Disability Insurance-Employer/Employee Statement which was signed by the claimant on April 16, 2004. Responsive to the question of whether his disability was work-related the claimant answered "no". The document also reflects that the claimant had not filed a workers' compensation claim relative to the disability. Further the document reflects a description of the claimant's "illness" as a stroke to the eye.

Claimant acknowledged the he asked Dr. Hoke, his primary care physician, to complete

forms so that he could continue to receive his short-term disability benefits following his April 8, 2004, right complaint. Dr. Hoke indicated that the claimant's complaint was not related to the claimant's employment. Claimant concedes that as a result of the completion of the documentation he continued to receive short-term disability benefits from April 8, 2004, until September 2004, when he began receiving long term disability benefits.

Claimant acknowledged that when he started seeing Dr. Felts he asked same to fill out some forms so he could continue receiving benefits. A June 17, 2004, form completed by Dr. Felts reflects that the claimant's condition was not caused or contributed to by his employment.

Claimant returned to the employment of respondent-employer in May 2004, and worked two days. Claimant had been released to return to work by his physicians at the time. It was during the afore period that claimant got to shaking, became nervous and relayed the he could no longer continue to work. Claimant's testimony reflects that he has no recollection of any doctor that treated or examined him following the May 2004 episode releasing him to return to work.

Respondent-employer opened its facility in Arkansas in 1989. Claimant called as a witness Mr. Marshall Tyson, a 37-year employee of respondent-employer who denied ever suffering any kind of injury or harmful effects from his work. Mr. Tyson worked at another facility of respondent before he moved to Arkansas. Mr. Tyson acknowledged that he has been exposed to chemicals in the work environment used in the operation of respondent-employer, to include resin, acetone, ethyl glycol. Mr. Tyson also testified that over the years he has looked at the MSDS logs from time to time. Mr. Tyson is a production supervisor and has been so for a number of years. As a production supervisor, Mr. Tyson oversees the work on products produced by respondent-employer. Respondent-employer makes different sidings for different

types of mobile homes. Chemicals are used in the manufacturing process.

Mr. Tyson's testimony reflects that Trimethylbenzene is used sometime at the facility to clean products and as an additive; benzoyl peroxide is used in the making of the product; cumene hydroperoxide is also used by respondent-employer as is ethyl glycol and acetone. Mr. Tyson at one time during the claimant's employment supervised same. Further, Mr. Tyson concedes that the claimant was exposed to the same chemicals in the work environment as any other employee of respondent-employer.

Mr. Tyson acknowledged that the air quality in the plant of respondent-employer has improved over the years. Mr. Tyson denies that there has been any work on the ventilation system in the last couple of years. Regarding the presence of a chemical odor in the plant Mr. Tyson responded, "it's a different smell than the outside". (T. 160). Mr. Tyson testified that he has not had any employee complain to him about suffering from chemical exposure at respondent-employer.

Mr. Tyson testified that the claimant did participate in extinguishing a fire that occurred at respondent-employer in 2001. Mr. Tyson added:

That particular fire, there was a lot of smoke, because the chemicals, I believe it was film. (T. 164).

Mr. Tyson denies that he has any respiratory problems. The testimony of Mr. Tyson reflects that to his knowledge he has never suffered any kind of adverse health effects from any kind of chemicals that were used at respondent-employer. Mr. Tyson also confirmed the policy of respondent-employer regarding requiring employees to report any kind of injury or accident to supervisory personnel. Respondent-employer maintains a log of injuries reported by employees.

The testimony of Mr. Tyson reflects that the claimant did not report any injury relative to the December 20, 2001, fire on line five. Mr. Tyson's testimony reflects that while he was not present at the time of the February 18, 2004, at the facility of respondent-employer when he arrived for work the following day there was no smoke from the fire present. Mr. Tyson denies that the claimant reported any adverse effects from being on the premises of respondent-employer after the occurrence of the February 18, 2004, fire.

Mr. Jason Barker testified that he is employed in the warehouse of respondent-employer, although he previously worked in a different area, production. Regarding his exposure to chemical, odors or vapors, Mr. Barker testified:

Not so much. It was controlled. I mean the impregnation area, you might smell a few fumes. But it was nothing, you know, bad. (T. 178).

Mr. Barker also testified regarding his observation of fires at the facility of respondent-employer:

There were a few. And some of them wasn't just like big fires. It might be like something small like a five gallon bucket. We still called it a fire. It was just a flame. So there was something small. And I was never really around something big. There was one that I know probably was sort of big. But it was like small. (T. 178-179).

Mr. Barker's testimony reflects that he could not recall being present and helping extinguish a fire on the premises with claimant. Mr. Barker noted that at the time of the February 18, 2004, fire on line eight he was in the warehouse and not exposed.

Ms. Linda Irving, a 14 year employee of respondent-employer, testified that she now works as a flogging technician, although she has worked as a lead person in the past. Although she could not recall specifically if she worked as a lead person during the time that the claimant worked for respondent-employer, Ms. Irving testified that most likely she did given that she has

done so on and off through the years. Ms. Irving's testimony reflects that she works with resin and gel coat every day and that she has not been affected by it, nor does she know of any other employees that have been affected in one way or another.

Ms. Irving testified that during her employment with respondent-employer she has actually seen six fires - three big ones and three small ones. Further, Ms. Irving's testimony reflects that the claimant was present at one of the fires. Ms. Irving explained:

That I know for sure. I was standing on the end of the line. I was just kind of looking toward the back, being lazy. And I seen this flash shoot out the side of the oven - -

Yeah. And it just kind of shot out the right side of the oven. And I got on the intercom and said, fire in the oven. And I looked up and David, who's another supervisor, was upstairs in the control room. And apparently he was already shutting the ovens and things off. And it went down. I mean, as for that fire, no. I would not say it was a bad fire. That's about all I remember. And we went down and cleaned it up. (T. 185).

Mr. Irving testified that the claimant did participate in the cleanup after the fire. While acknowledging that there may have been vapors emitted from the fire Ms. Irving testified that the facility was equipped with ceiling fans, which "pretty much sucked up everything". (T. 185).

Ms. Irving also testified that she was present at the time of the February 2004, fire on line eight, which was more severe. Ms. Irving's testimony reflects:

It was, just started in a drum I believe. And it was a pretty significant fire. When it started, the alarms went off. And as usual, I do my duty is when I'm running out the door, I pull the fire alarm. And we waited out in the parking lot. We get our head count to make sure everybody is safe. And the fire department came. Various people from the plant came, you know, we're always on the phone calling everybody informing them of the fire. And we waited out in the parking lot until the smoke cleared. And then probably a couple of hours or so we went back in and we proceeded to clean up. (T. 186).

Ms. Irving testified that she was uncertain if the claimant participated in the cleanup following

the February 2004, fire.

On cross-examination, Ms. Irving testified that the 2004 fire on line eight occurred on the second shift at approximately 6:00, 6:30 p.m. Regarding the cleanup following the fire, Ms.

Irving testified:

We cleaned up water. We got gel coat, resin sitting in containers that we have to take to the resin room and drain off. We've got a panel in the oven. We had to pull this out, you know. We do everything we possibly can after a fire to get that line back in shape so we can run. Unfortunately, it took a few days for us to run. But we clean it as much as possible. (T. 189).

Ms. Irving estimates that the clean up commenced at about 10:00 or 10:30 p.m.

Ms. Diane Crockett, a 16-year employee of respondent-employer, has been a lead person the past 11 years. Ms. Crockett was present at the time of the December 2001, fire on line five, which described as a small fire. The testimony of Ms. Crockett reflects that the line was back up within a couple of hours of the fire. Ms. Crockett was the claimant's lead person at the time of the fire. Ms. Crockett denies that the claimant make any complaints to her of the fire causing him any adverse health problems or complaints.

Ms. Crockett testified that approximately two months prior to the hearing in this claim she received a telephone call from the claimant at her residence. Regarding the telephone conversation, Ms Crockett's testimony reflects:

He asked me how I was doing. And I said fine. And he told me that he was wanting to let me know that I might be subpoenaed. He said that I might and a couple of other people might be subpoenaed because he had a lawsuit against Kemlite.

He asked me, he was asking me questions about the fire. And I was telling him that, you know, I didn't remember anything, you know, because I wasn't back there. He was asking me do I remember about

him getting some trash in his eye. And that's it. (T. 198-199).

Ms Crockett also testified that during the telephone conversation the claimant asked her not to disclose certain information during the hearing:

We had a discussion about when he was, I guess before he started working at Kemlite, and we was discussing the issue about When he was fooling around with this woman a big guy came in and hit him with a bat. And I asked him about that. And he had told me on the floor that it was true. I asked him. First I asked him, I told that he was in Wal-Mart. And I asked him was it true. And he had told me that yes, it was.

He was beaten with a baseball bat. (T. 199-200).

Mr. Mark Emory testified that he is currently employed by respondent-employer since May 2000, and was so employed in December 2001, at the time of a fire on line five. Regarding the December 2001, fire, Mr. Emory testified:

As we come in at that time, we would start the line up for production. And what we called pulling film, and getting things going for the line. And there was some raw resin that went through the line as we were doing our procedures, went into the ovens which were already running, and started a small fire, and we, you know, we get them put out within two to three to four minutes. And, you know, people came back after that and started the clean up process. (T. 203).

Mr. Emory's testimony reflects that he and the claimant participated in putting out the fire using fire extinguishers. Mr. Emory denies that he suffered any adverse health effects as a result of putting out the fire. Mr. Emory estimated that within 15 to 20 or 30 minutes following the fire the smoke was gone as a result of having been sucked up through ceiling fans.

On cross-examination, Mr. Emory testified that everyone that worked in the back with acetone was required to wear rubber gloves. Mr. Emory also testified that he was aware of the presence of the MSDS book in the station where he worked. Mr. Emory testified that he had also

looked at the MSDS book. (T. 207).

Mr. Tony Hanusowski has been employed by respondent-employer since October 31, 1990. Mr. Hanusowski provided testimony of the various jobs that he has performed during his employment with respondent-employer through his present position as Human Resource Manager. (T. 210-212). Mr. Hanusowski also provided testimony regarding the various jobs that the claimant performed during his employment with respondent-employer. (T. 212-216).

The testimony of Mr. Hanusowski reflects that from September 2000 until March 11, 2004, claimant worked in the dry portion of the line as a line operator. Mr. Hanusowski maintains that respondent-employer issue and require the use of appropriate personal protection equipment to its employees. Regarding the claimant's assertion of having been issued cloth gloves when handling acetone, Mr. Hanusowski testified:

In that situation all I could do is speculate again. But if the dry end of the process and at the front end or the very back end where the met room is, that's where they would use the cotton gloves typically. If anywhere in the impregnation area or they'll be subject to using acetone or rebuilding tablets or whatever, we had rubber gloves that were deemed appropriate for using that material. And to say, you know, I don't know to say, well you didn't ask that question, but yes we have cotton gloves and rubber gloves that are used in the appropriate areas. (T. 216-217).

Mr. Hanusowski offered that when the claimant worked as a line operator either in shears or front utility or the mat room there would be "very, very limited" use of acetone.

Mr. Hanusowski testified regarding the ventilation in the plant during the claimant's employment:

We have, as far as ventilation in the plant, we have nine. I believe it was nine overhead exhaust fans that's situated right in between the two production lines up on the ceiling that runs the length of the building. And when we are there, when people are there in the plant, those fans are always

turned on. They're turned on by the production supervisor on the Sunday night start up to start the whole week. And so there's windows on the sides of the building. It's kind of a long building with windows on side are always open. And the fans are always running. So it's basically taking stuff out the top. It really, it was put in there because we all have an air conditioned environment. And we do have ovens there. So in the summer-time, it gets very hot. It's very uncomfortable. So we try to make it as comfortable as possible. That's ventilation as far as the area goes. And they mentioned incinerator earlier. We have an incinerator that's on top of the building that, again I don't know the details of all how it works specifically and exactly. All I know is generalities. And have been told the incinerator, and I've seen the duct work that comes down to the impregnation area and duct work from the ovens and anywhere, some spots in the very back of the resin room, where duct work comes down and basically it sucks fumes up. And the incinerator is supposed to burn up a very large percent of the fumes. I've heard numbers like 95% or whatever, but I don't know. (T. 218-219).

Mr. Hanusowski was not present in the plant at the time of the February 18, 2004, fire, however found out about it and returned to the plant. Upon returning to plant following the fire Mr. Hanusowski obtained photographs after the plant was cleared for people to go back inside. Mr. Hanusowski's testimony reflects that he took the photographs to document the damage from the fire between 8:00 and 9:30 p.m. The smoke had cleared at the time of the photographs.

The testimony of Mr. Hanusowski reflects that the claimant worked his regular scheduled eight hour shifts February 19-21, 2004. The claimant did not work on February 18, 2004. Other than the claimant, Mr. Hanusowski testified that during his 16 years of employment with respondent-employer no other employee has made a claim or allegation of being injured due to chemical exposure at respondent-employer, nor a claim of injury from smoke inhalation.

Mr. Hanusowski testified that the MSDS books are available to any employee of who wants to see them. Regarding the duration that line eight was down as a result of the February 18, 2004, fire, Mr. Hanusowski testified:

Line eight was down after that fire Wednesday, Thursday, Friday, Saturday, and Sunday. And then Monday morning sometime early on day shift is when line eight started production again. (T. 224).

Regarding routine checks by respondent-employer relative to the presence of chemicals in the environment of the facility, Mr. Hanusowski testified:

We do. We have a corporate safety person from our Joliet office. He will come, now we actually do it way more because we have a person on our site that does it. Buy we have a corporate person that comes and I don't know what it is called that they wear, but they go around and they randomly pick people that works up and down the line and put an apparatus on them to test what, the way I understand it, to get an exposure amount that they're subject to whether it be acetone or noise or whatever. That's how we determine, we monitor the process and determine that we're, you know, trying to make sure that the employees are not subject to something that's causing them danger. And as far as how often, I do not know. I just know that it does happen, periodically. And now it happens more that it did before three years ago. (T. 224-225).

Mr. Hanusowski's testimony reflect that he is not aware of any instance of an overexposure of chemicals or noise levels:

No. I'm not aware of any. Recently we had the noise levels checked. And from my understanding again, we were close enough to the exposure limit that OSHA deems as too loud. And we did not meet that limit but because we were close to it we implemented a hearing protection policy within the last year and a half I guess. (T. 225).

The last day that the claimant worked at the facility of respondent-employer before taking off to have surgery on his foot was March 11, 2004. At the time of the surgery claimant was put on short term disability through respondent-employer. Further, when the claimant went to the hospital and was diagnosed with central retinal artery occlusion resulting in blindness in one eye, he filed for continued short term disability benefits based on that condition. Claimant received the afore benefits. Claimant was later approved for and received long term disability benefits

through respondent-employer. Mr. Hanusowski explained:

Yes after the short term, our policy is they're on short term disability for a six month time frame, and then our company policy says then the employee terminates, and if applicable, they roll on to long term disability. (T. 227-228).

Mr. Hanusowski testified that he first learned of the claimant's claim of a work related injury relative to his eye complaint with the filing of the Form AR-C. Regarding a subsequent conversation with the claimant, Mr. Hanusowski's testimony reflects:

I was in the office. He had called. I don't know how close exactly to the time we found about the claim, but it was at sometime after that fairly shortly after that because it was fresh on my mind. And he called, and I really wasn't sure what he was wanting. He just talked for a few minutes. And he said, you know I got a lawyer. And I said yes, I'm aware of that. And he said and I'm not going to quote him but something to the effect of, I don't think there's much to that. But he said I, he said, we're having a tough time making ends meet right now. And I said I understand. I said, you've got to do what you've got to do because I didn't want to get into a lengthy conversation because I knew what was going on. And so that's pretty much, we terminated the conversation. (T. 228-229).

On cross-examination Mr. Hanusowski testified regarding the claimant's attempt to return to work after March 2004:

From what I remember, I wasn't in HR until September of '04. Again I was up there in some capacity. But I seem to remember yes. He was trying to come back and return to work, and then as I heard earlier today was determined I think mor so by him that it was, he felt like the heat was bothering and nerves were bothering him. And he felt like that he just couldn't be there. I remember that happening. And so yes, I do remember that. (T. 231).

Dr. David Hewitt received his M.D. in 1987 from the University of South Dakota, and Masters of Public Health and Epidemiology from San Diego State University. Dr. Hewitt also has a Bachelor's Science Degree in Chemistry and has completed residencies in preventive

medicine and occupational medicine and is board certified in both specialties. Dr. Hewitt is employed the Center for Toxicology and Environmental Health in Little Rock and has been so employed for approximately four years. Regarding his present employer Dr. Hewitt testified:

. . . . I've worked with this group previously for about three years. It's a toxicology consulting group. We have about 70 employees, MPhD toxicologists, three occupational health nurses, and we respond to various issues regarding chemical and human health. Prior to that, I worked with the Agency for Toxic Substances and Disease Registry in Atlanta as a medical officer. It's kind of a sister agency to the Centers for Disease Control, and it looks at chemical exposures. And so we responded to various claims of public chemical exposures throughout the country while I worked there. Prior to that, I was working at an Occupational Medicine Clinic. I've also worked with the California State Health Department in their environmental epidemiology and toxicology program. (T. 91).

At the request of respondents Dr. Hewitt looked at materials related to the present claim and authored a report setting out the materials reviewed and opinions reached regarding same. Dr. Hewitt reviewed the medical records of the claimant, (Joint Exhibit #1), the claimant's July 25, 2006, deposition, and the September 19, 2006, deposition of Dr. Larry Felts, (CX. #1). Dr. Hewitt testified that he also reviewed the claimant's work history with respondent-employer, as well as information regarding two fires that occurred during the claimant's employment. Dr. Hewitt reviewed photographs taken the evening of the February 18, 2004, fire, (RX. #1).

Dr. Hewitt testified regarding the product of his review of the above material:

Well, the first thing I did was look at the medical records. We did a complete literature search looking at central retinal artery occlusion and all possible causes and risk factors especially looking at chemically related causes. And I looked, you know, looked through the medical records and tried to correlate things, other risk factors that might be present. (94).

Dr. Hewitt's testimony reflects that he was unable to locate any scientific study or literature

which suggested a causal connection between central retinal artery occlusion and any type of chemicals utilized at respondent-employer:

No, we weren't. We, you know, we looked at the MSDS and looked at the chemicals that were mentioned and just chemicals in general. And there's really nothing out there that relates chemical exposure to that condition. (T. 94).

Dr. Hewitt continued, regarding his conclusion:

Sure. One of the things we do is look at chemical exposure and causation issues. And for those types of questions I approach each case the same. I look at five main questions; whether the chemical can cause the reported health effect. If it can, was there exposure? Was that exposure sufficient to cause that effect. Is there a consistent temporal relationship between the exposure and the health effect? And then are there any other confounders or alternative explanations that might explain that health effect? So that's the process I use for every case regardless. So in this case, the first thing we looked at was the literature. Is there anything out there that says that there's a chemical cause for this condition. And based on our review, we did not find anything. So that's, so you know basically meets the general causation criteria and that we just cannot find anything that would support that relationship there. We also look at a number, what are the other risk factors for central retinal artery occlusion. And there's several that have been identified. I'll get to it a little bit later. The next thing was looking at some of the temporal relationships between this exposure and the conditions of the central retinal artery occlusion. We found that his last day of work was in March 11, 2004. His central retinal artery occlusion did not occur until about a month later on April 8th. That really wasn't consistent with a good temporal relationship there. We looked at the fires, you know, the fires. The most recent was about two months before that. The other fire was, you know, three years I believe before that. So again there wasn't a good temporal relationship there in exposure in that respect. So, it's basically looking at other explanations for that condition. And with his history, medical history, there's at least three significant risk factors there. The first one is he had surgery for his foot on March 12th or thereabouts. So he's off work because of that, and he had, you know, a surgical procedure. The significance of that is that the surgery is known to affect coagulation and is associated with blood clot formation and not just a day or two after, but for two or three weeks maybe afterwards. So that's something to consider in that case. We looked at the literature, and we found that there were some reports of central retinal artery occlusion associated with a recent surgery.

In most cases this was like a spinal surgery. But there was some evidence associating that with surgical procedures. The second significant risk factor is smoking. Medical records indicate he had a smoking history of about one pack per day for 16 years, at least in the podiatry consult just before his surgery. That's significant because this condition of central retinal artery occlusion has been shown to be associated with smoking. Depending on the study, it can be anywhere from between two and a half to four times the risk for non-smokers. So in that case, I think that's a pretty significant risk factor. The third risk factor is a condition which is identified in laboratory testing after the event. He had an extensive work up for causes of involved events or things that would cause his blood clot that could, you know, affect the eye. I looked at his heart. Looked if there's any evidence of autoimmune disease and other things. And about the only thing we could find was a condition called Factor Five Leiden Mutation. And that refers to a, Factor Five is a blood clotting factor. It's involved in the formation of clots. That mutation affects the coagulation process. And an individual has that defect, it's a genetic defect which you have at birth. So they are more likely to form blood clots and have complications from that. In the laboratory tests he had a, they call a buncopy (phonetic) or a heterozygous genes. There's two genes for each kind of factor. And the laboratory reports that for one copy of the gene, you have a one to eight increase risk of having a thrombal event and central retinal artery occlusion qualified something like that. So everything we looked at was, you know, there are case reports of people with this kind of condition having a central retinal artery occlusion. And there actually are a number of different studies, case reports that showed that to be present. And I cited those in my report. So the main conclusion from that, because of that factor he has kind of a hypercoagular bulk state. And he's more at risk for developing those types of blood clot conditions and that would be associated with that. And then the final opinion is we looked at his current psychological complaints and whether those would be associated with a kind of chemical exposure. In this case, it looks like he had a central retinal artery occlusion and no type of stroke or a stroke that would be associated with a brain injury. And I see on his brain MRI which didn't show any types of abnormalities that would be associated with a stroke. He didn't have any other symptoms that would suggest a stroke like, you know, paralysis of one side, weakness, or something like that. So it looks from his medical records that the main thing that happened was the retinal artery occlusion and no brain injury. So as explains his psychiatric symptoms, there appears to be a preexisting history of anxiety, which was mentioned in his medical records. There's a strong family history of psychiatric conditions in his family. I found no evidence that psychiatric symptoms would be secondary to those types of chemical exposures. He's also on a number of medications for treatment of anxiety and psychiatric complaints. Those are associated with some significant side

effects, sedation and a number of others, which I think would have to be considered in some of the current complaints. They seem - - so I can summarize, I thin the main explanations for that condition is this Factor Five Laiden mutation, plus the smoking, plus the surgical history, which all I would consider additive and increase his risk for that condition. (94-99).

In his report, Dr. Hewitt noted that one of the medications that the claimant is taking for his psychiatric condition is Geodon, an anti-psychotic medication usually prescribed for the treatment of schizophrenia. Further, Dr. Hewitt testified that he was provided the MSDS index listing the chemicals used at respondent-employer, and he did not find any scientific study which linked any one of the chemicals to a central retinal artery occlusion.

During cross-examination, Dr. Hewitt stressed that the literature did not reflect that there is any chemical that is associated with the condition diagnosed in the claimant. (T. 102). Dr. Hewitt concedes that sometimes the MSDS's are not very specific.

Dr. Hewitt's testimony reflects that there no objective evidence in the claimant's medical records that he had a stroke other than the central retinal artery occlusion. Additionally, the testimony of Dr. Hewitt reflects that there is no objective evidence in the medical records that the claimant had a brain injury.

The testimony of Dr. Larry Felts, a Jonesboro psychiatrist, was obtained during a September 18, 2006 deposition. Dr. Felts first saw the claimant on June 17, 2004, pursuant to a referral of Dr. Scott Hoke, his primary care physician. Following his initial evaluation of the claimant during the June 17, 2004, visit, Dr. Felts relayed that his impression was that the claimant had an organic mood disorder, depressed, as well as an organic delusional disorder. The claimant also had anxiety disorder NOS, and a central retinal artery occlusion. (CX. #1, p. 11). Dr. Felts's testimony reflects regarding whether the claimant's impairment was caused

primarily by an organic condition:

At that time, after just first evaluating him, I found it hard to determine how much of his symptoms were a direct result of the things that happened at Kemlite, the smoke inhalation, the chemical exposure that he had told me about, and how much could have been caused by some other reason for him having the stroke or having the retinal artery occlusion.

He was saying that all of his psychiatric symptoms that he was having, he didn't have any of it before being exposed to the chemicals at work, and it's all come about since then. And so he blamed it on that. (CX. #1, p. 13-14).

Dr. Felts acknowledged that the only knowledge of the claimant's cognitive impairment or lack thereof prior to the claimant's first visit of June 17, 2004, was based on information relayed by the claimant and the claimant's wife. Regarding his opinion of the claimant's brain complaint,

Dr. Felts testified:

Well, I think the most likely cause is that he had some damage due to - - here again, this is just speculation. But I would guess that the smoke inhalation, the chemical involved, caused some hypoxia, and a lack of oxygen to the brain or possibly damage to the blood vessels is what caused it. (CX. #1, p. 19).

Dr. Felts addressed a July 15, 2004, letter that he authored on behalf of the claimant to the Social Security Administration. Specifically, Dr. Felts discussed the relevance of the claimant's family history, to include the fact that the claimant's father was schizophrenic and committed suicide and that the body was found by the claimant. Dr. Felts testified:

Well, it was a traumatic event for him to find his father dead like that, like it would be for any child. It's also significant in that families that have depression and schizophrenia and mental illnesses like that, there's a higher susceptibility that they could inherit that. (CX. #1, p. 21).

Claimant's older brother also had mental illness. Regarding some neuropsychiatric testing that the claimant underwent in which he relayed to Dr. Felts that he did not feel that he had done well,

Dr. Felts testified that he did not obtain the test results. Further Dr. Felts offered that the neuropsychiatric testing was done at the behest of the Social Security Administration. The testimony of Dr. Felts reflects that his last visit with the claimant was June 29, 2006. (CX. #1, p. 32).

While Dr. Felts concedes that it would be speculation that smoke inhalation and/or any kind of chemical exposure caused the claimant's problems, he also offered:

I think it's a reasonable estimate of what probably happened. But there's not a test or way that you can prove that it did happen that way or it didn't. (CX. #1, p. 37).

Dr. Felts added, regarding the basis of his opinion and the role that chemicals played in the claimant's complaint:

My belief is that the fact that his symptoms began occurring after the time of his exposure and that he had physical damage to his nervous system by way of causing blindness in one eye and cognitive testing showing deficits that usually indicate brain damage, I think it's probably more than coincidence that all this is happening at the same time. (CX. #1, p. 38-39).

Dr. Felts notes that the key factor in his opinion is the timing, relative to the exposure to smoke that involves chemicals and the retinal artery occlusion:

Right. Now, like I said, I'm not exactly sure exactly when the psychiatric symptoms first started in here. It's during this time frame, but I don't know if it was, you know, in this exact order like you're saying. (CX. #1, p. 39).

Regarding the order in which he placed matters, Dr. Felts' testimony reflects:

The symptoms began around the same time that he had the stroke, the blindness in his eye. Whether they started the week before, the week after, I don't know. You know, but it's about the same time.

But it was after his exposure, but it wasn't like months later; okay? (CX. #1, p. 39).

Dr. Felts' testimony concludes that it is the timing of the various events relative to the claimant which form the basis of his opinion. Dr. Felts further testified that he was not aware of any objective tests that could either prove or disprove a probable connection between the chemicals or smoke exposure and the problems that the claimant has.

Regarding the nexus between the claimant's exposure to chemicals and smoke in the work place and his subsequent physical complaints and symptoms, Dr. Felt testified:

The information we have is that he was exposed to smoke and chemicals, and he developed a lot of symptoms afterwards plus physical damage to his brain afterwards.

And given that, I think it's reasonable to assume that it's not a coincidence that his problems started right after he was exposed and had the stroke.

* * *

After the smoke exposure, he's developed a lot of different symptoms. He's had pain in his eye, also in his leg. He has migraine headaches. He's had panic attacks with tachycardia, shortness of breath, blackout spells. He's had sleep loss, significant impairment of his concentration and memory. You know, he's had a lot of symptoms that have come on since then.

Like I said a while ago, I don't know specifically exactly when. They developed after the inhalation, but I don't know exactly what time. This was within the next couple of months. (CX. #1, p. 42-43).

Dr. Felts, in identifying the claimant's brain injury, pointed to the documented central retinal artery occlusion , as well as construction dyspraxia that the claimant demonstrated on testing in his office. (CX. #1, p. 43-44). Dr. Felts testified that the claimant's condition has improved over the period of time that he has been seeing him. Dr. Felt's formal diagnosis of the claimant's complaints are mixed paranoid and affective organic psychotic state as well as anxiety disorder NOS.

Regarding the role that the claimant's family history of psychiatric/psychological problems play in his diagnosis, Dr. Felt testified:

There's always a possibility that that could play a part in his condition. When you're under a tremendous amount of stress, sometimes that can bring on psychological problems that you have the potential for but just hasn't shown up yet. So there's always the possibility that some of that's going on.

If there was no organicity in his testing or with the stroke to his eye and things like that, then that would be more likely what our best guess would be. But since there is this other, that's more likely to be it. It that confusing enough for you?(CX. #1, p. 46).

Dr. Felts testified regarding the role of the stroke or blindness in the claimant's eye triggering considerable stress and other psychological problems:

It certainly can and does cause a considerable amount of stress. Whether that would cause all of the difficulties that he's having, it's possible. It would be unusual, though. (CX. #1, p. 47).

Dr. Felts acknowledged that the only two records that he had seen relative to the claimant were reports relative to two office visits of the claimant to Dr. Hoke. While acknowledging that the more information he has regarding a patient is "a good thing", Dr. Felts nevertheless concluded that he did not think it was necessary in order for him to make his diagnosis of the claimant's complaints. (CX. #1, p. 47). Dr. Felts testified that he probably would do further research into how chemical exposure can affect the brain and the different kind of symptoms it would cause.

After a thorough consideration of all of the evidence in this record, to include the testimony of the witnesses, review of the medical 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 March 11, 2004, the relationship of employee-employer-carrier existed among the parties.
3. On March 11, 2004, the claimant earned wages sufficient to entitle him to weekly compensation benefits of \$342.00/\$257.00, for temporary total/permanent partial disability.
4. On March 11, 2004, the claimant did not sustain an injury arising out of and in the course of his employment, pursuant to Ark. Code Ann. §11-9-102 (4) (A) (i).

CONCLUSIONS

Claimant asserts that as a result of his exposure to chemicals and smoke within the course and scope of his employment with respondent-employer, he suffered a compensable injury which required medical treatment and rendered him totally incapacitated from engaging in gainful employment. Claimant seeks corresponding temporary total and medical benefits from respondents as well as controverted attorney fees. Respondents deny that the claimant suffered any compensable injury while within their employment and controvert this claim in its entirety.

The present claim is one governed by the provisions of Act 796 of 1996, in that the claimant asserts entitlement to workers' compensation benefits as a result of an injury having been sustained subsequent to the effective date of the afore provision. Specifically, claimant asserts that he sustained a gradual onset neurological injury, a diffuse brain injury and a loss of vision in the right eye, all attributable to his employment with respondents.

Ark. Code Ann. §11-9-102 (4) (A) defines compensable injuries under several categories, to include specific incident injuries and gradual onset injuries as well as mental illness, and heart or cardiovascular injuries, hernias, and an adverse reactions experienced by any employee of the

Department of Health and Human Services or employee of a hospital licenced by the department related to vaccinations. A compensable injury must be established by medical evidence supported by objective findings as defined in Ark. Code Ann. §11-9-102 (16). The burden of proof of a compensable injury for an employee alleging a gradual onset injury shall be by a preponderance of the evidence, and the resultant condition is compensable only if the alleged compensable injury is the major cause of the disability or need for treatment.

In the instant claim claimant asserts having sustained a gradual onset neurological injury as well as a diffuse brain injury. The medical in the record reflects that claimant's diagnoses as central retinal occlusion, mixed paranoid and affective organic psychotic state, anxiety disorder NOS, and S/P [suspected] cerebral vascular accident.

Ark. Code Ann. §11-9-113, Mental injury or illness, provides, in pertinent part:

(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;

While the claimant attributes his disability and need to for medical treatment, to include that under the care of Dr. Larry Felts, a Jonesboro psychiatrist, to exposure to chemicals in the work environment, gradually resulting in his injury, the evidence fails to demonstrate by a preponderance. A claimant is required to establish a causal connection between any objective findings and the alleged compensable injury, even if the alleged compensable injury is an aggravation of a pre-existing condition. *Ford v. Chemipulp Process, Inc.*, 63 Ark. App. 260, 977 S.W.2d 5 (1998).

Ark. Code Ann. §11-9-114, Heart or lung or illness, provides, in pertinent part:

(a) A cardiovascular, coronary, pulmonary, respiratory, or cerebrovascular accident or myocardial infarction causing injury, illness, or death is 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.

The analysis of the claimant's medical records along with a review of the testimony of the claimant, Dr. Felts, Dr. Hewitt and the other witnesses fails to satisfy the requirements for establishing the compensability of the claimant's claim by a preponderance of the evidence. The evidence reflects that the claimant successfully discharged his employment duties in the employment of respondent-employer through March 12, 2004, at which time he was off work for surgery on his feet. There is no evidence in the medical reports that the claimant attributed any physical complaints to the conditions of his work environment, either smoke from fires or being in the presence of/and handling chemicals, prior to April 8, 2004. Claimant was at home when he suffered the central retinal occlusion, which resulted in blindness in his right eye.

There is no credible objective evidence in the record establishing a nexus between the claimant's diagnosed psychiatric/psychological complaints to his employment with respondent-employer. The claimant is life-long smoker with a family history significant for his father being schizophrenic and committing suicide when the claimant was five years old. Claimant found his father's body. Claimant also has an older brother who is mentally ill. The claimant has failed to sustain his burden of proof by a preponderance of the evidence that he sustain a compensable injury in his employment with respondent. This claim is respectfully denied and dismissed.

IT IS SO ORDERED.

Andrew L. Blood, ADMINISTRATIVE LAW JUDGE

