

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F609259

JIMMY WILLIAMS

CLAIMANT

SUPERIOR TRAILER SALES CO.

RESPONDENT EMPLOYER

ZENITH INSURANCE CO.

RESPONDENT CARRIER

ORDER AND OPINION FILED APRIL 24, 2008

Hearing before Administrative Law JUDGE LINDA K. MARSHALL.

Claimant appeared PRO SE.

Respondents represented by the HONORABLE JEREMY SWEARINGEN, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

The above claim came on for a hearing in Little Rock, Arkansas on March 12, 2008. A prehearing conference was held and a prehearing order was filed on January 16, 2008. A copy of the prehearing order was marked as Commission Exhibit No. 1 and made a part of the record without objection.

At the prehearing conference, the parties agreed to the following stipulations:

1. There was an employer-employee relationship on June 6, 2006.
2. The compensation rates are \$194/154.

The claimant contends that he sustained a compensable lung injury on or about June 6, 2006. The claimant contends that he is entitled to medical benefits and temporary total disability benefits from the date of the injury until February 2007.

The respondents contend the claimant's alleged injury did not arise out of and in the course of his employment with the respondent employer. Alternatively, there is a

notice defense that any benefits would not be owed by the respondents until actual notice was provided and respondents contend notice was given on or about August 10, 2006. Respondents contend that the claimant cannot prove that an accident was the major cause of the alleged physical harm as required by Ark. Code Ann. §11-9-114.

Respondents further contend that whatever physical harm may be evidenced in the medical records, the evidence will show that it is equally or more likely to have resulted from other activities or other employment. Respondents contend the claimant's condition is histoplasmosis, which is a fungal condition and is an ordinary disease of life to which the public is exposed and is not particular to the claimant's work for the respondent employer. Respondents also contend that if the claim is found to be compensable, the claimant is not entitled to temporary total disability benefits, since he has always been able to work in some capacity.

ISSUES TO BE LITIGATED

1. Compensability of a lung injury.
2. Medical benefits.
3. Temporary total disability benefits.

From a review of the record as a whole, to include 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, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. §11-9-704:

**FINDINGS OF FACT
AND
CONCLUSIONS OF LAW**

1. There was an employer-employee relationship on June 6, 2006.
2. The compensation rates are \$194/154.
3. The claimant has failed to prove by a preponderance of the evidence that he sustained a compensable lung injury on July 5, 2006, by breathing chemicals at his employment.

DISCUSSION

The claimant, 42 years old, began his employment with the respondent as a jockey driver in 2006. The claimant testified about an incident on July 5, 2006, when he was using an acid spray to take vinyl letters off a trailer. According to the claimant, a gust of wind blew the acid spray in his face and mouth. The claimant immediately got a coke to rinse his mouth and he wiped his face with his shirt. According to the claimant, Donald Lewis, his immediate supervisor, saw him spitting the coke out and he told Mr. Lewis that he had breathed the chemical spray. The claimant testified that he was feeling dizzy and was nauseated during the lunch break. After lunch, the claimant clocked back in for about 15 minutes and then clocked out and went home. According to the claimant, he laid down for about one hour and when he got up, he had a stabbing pain in his right lung. The claimant next took one of his sister's pain pills and one of his mother's muscle relaxers.

The claimant first went to the emergency room on August 10, 2006 and had a chest x-ray. By August 10, 2006, the claimant was working for another employer, since

he was terminated from the respondent employer on July 26, 2006. According to the claimant, he was admitted to the hospital for 10 days with suspected tuberculosis. The claimant had chest x-rays, CT x-rays and a lung biopsy and a skin tuberculosis test. Various fungal tests were performed. The claimant testified that he also experienced a collapsed lung. The claimant treated with Dr. Robert Searcy, a lung specialist, for a period following his release from the hospital. Dr. Searcy prescribed a medication for the claimant to take and the claimant was diagnosed with histoplasmosis. The claimant remained off work for about three to four months and returned to work for Brooks Carpet. The claimant's recall of when he started to work was not clear but he thought it was about February 2007. The claimant worked one month there and changed employers. The claimant currently works for himself in the flooring business.

The claimant described his condition now as healthy and he believes his lungs are healed. The claimant testified that he has a little scar tissue from the histoplasmosis but that is all. The claimant believed his last doctor's visit was with Dr. Searcy on July 30, 2007.

Under cross examination, the claimant verified that he stated in his September 8, 2006, deposition that he was ready for work and would begin a full time job the next day. The claimant also verified that he completed his initial application for employment with the respondent employer on June 9, 2006. The claimant's first job with the respondent employer was to shuttle trucks and he later moved to the activity of de-identification of trailers. The claimant used a product called Great Dane decal remover spray to pull decals off the trailers of big trucks. The claimant worked in a big bay area with three ventilation fans and he learned to close certain doors and to use the fans to

control the wind in the shop. The claimant bought his own leather gloves and wore glasses and verified that the aerosol can of decal remover did not say anything about wearing a mask.

The claimant was questioned about when the accident occurred at work and he testified it was right before lunch on July 5, 2006 and he clocked in only 15 minutes after lunch and clocked out and went home. On the AR-N form the claimant completed, he indicated the incident occurred on July 6, 2006, at 3:45 p.m. The claimant testified that he remained off work for several days following the July 6, 2006, incident. The claimant was questioned about his time cards reflecting he worked for several days after the July 6, 2006, incident. The claimant explained this by stating that he believes the time cards were manipulated. The claimant confirmed that he continued working for several weeks after the July 5, 2006, incident and he continued de-identifying trailers. The claimant confirmed that he did not ask to complete paperwork for a work injury between July 5, 2006 and July 26, 2006, nor did he seek medical treatment. The claimant did not work for the respondent employer on July 25, 2006 and did report for work on July 26, 2006, at 9:02 a.m., rather than at 7:30 a.m., because he overslept. The claimant confirmed that he was fired on July 26, 2006, by Mr. Steven Dennis and that he had not completed a work injury form.

Donald Lewis, formerly employed with the respondent employer as a mechanic and shop manager, testified that he was not aware of the breathing acid incident the claimant has described on July 5, 2006. Mr. Lewis did confirm that he asked the claimant to open the shop on July 10, 2006.

Gennie Lewis, sister of the claimant, confirmed that she had surgery on July 10, 2006 and her brother opened the shop of the respondent employer for her husband.

Marie Williams, mother of the claimant, testified that the claimant came home on July 5, 2006 and was sick and having trouble breathing. Ms. Williams testified that her son did not work the rest of the week but would not go to the doctor. Ms. Williams confirmed that her son opened the employer's shop on July 10, 2006, but came back home by afternoon.

ADJUDICATION

The claimant contends that he sustained a compensable lung injury after he breathed some spray decal remover acid on July 5, 2006. Ark. Code Ann. §11-9-114(a) provides:

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.

In the present case, the claimant has failed to prove by a preponderance of the evidence that he sustained a compensable pulmonary injury on July 5, 2006. The claimant testified that he had chest pains following an incident where he breathed decal remover acid spray. The claimant testified that he missed several days of work following this incident but did return to work and did not seek any medical treatment until August 10, 2006. The claimant sought emergency room treatment on August 10, 2006 and was admitted to the hospital with pneumonia, chest pain, and right lung mass. A lung biopsy was performed and the claimant was diagnosed with histoplasmosis and was treated with medication.

Since the claimant treated with Dr. Robert Searcy for his lung condition, respondents asked Dr. Searcy some pertinent questions about the claimant's condition. Dr. Searcy opined that it would be unlikely for a histoplasmosis infection to be caused by a brief exposure to spray from a sealed can of Great Dane Remover Spray. Dr. Searcy said it was possible that the claimant's histoplasmosis was caused by the claimant's removal of flooring and tiles in his occupation as an installer in the flooring business. Dr. Searcy also opined the claimant could have contracted histoplasmosis while working in a shed at home cleaning residue off tools. Dr. Searcy further opined that he was unable to state with any certainty how or when the claimant developed histoplasmosis.

The claimant asked Dr. Searcy if patients experience intense chest pain as he experienced and Dr. Searcy stated this was not likely with histoplasmosis. The claimant asked Dr. Searcy if the lungs would repair themselves if acid that was breathed in caused holes in the lungs and Dr. Searcy confirmed the lungs repair themselves.

The medical evidence simply does not connect the claimant's contention of a chemical that the claimant breathed and his diagnosis of histoplasmosis. The claimant's symptoms of August 10, 2006, were chest pain on deep breathing, shortness of breath and a cough productive of yellowish sputum. A CT scan revealed a right lung mass. Further biopsy provided the claimant's condition to be diagnosed as histoplasmosis.

The claimant contended his work environment was dusty and dirty; however, the claimant admitted that he lived on an acre and a half and that he used a riding lawn

mower to cut the lawn and there was dust. The claimant confirmed that he has pets on his property and fruit trees with birds. The claimant confirmed that he cleaned his tools after retrieving them from a storage shed and he scraped some paint from a truck he was working on. The claimant also found work in the flooring business after he left the respondent employer. The claimant was removing tile and carpet and installing new flooring.

Both witnesses for the employer testified that the claimant did not report a work injury on July 5, 2006, or a time shortly thereafter. The claimant only reported a work injury after he was terminated on July 26, 2006. Steven Dennis, general manager of the respondent employer, testified that work injury paperwork was completed when the claimant came in approximately two weeks after he was terminated claiming a work injury. Further, Donald Lewis, shop manager for the respondent employer, testified the claimant did not report an injury following the July 5, 2006, incident.

The testimony and the documentary evidence do not substantiate the claimant's testimony that he sustained a compensable chemical inhalation injury to his lungs on July 5, 2006.

ORDER

The claimant has failed to prove by a preponderance of the evidence that he sustained a compensable lung injury on July 5, 2006, by breathing chemicals at his employment. The claim for benefits is respectfully denied and dismissed.

IT IS SO ORDERED.

**LINDA K. MARSHALL
ADMINISTRATIVE LAW JUDGE**