

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F111364

RAYMOND D. RYAN, EMPLOYEE	CLAIMANT
STAFFMARK, INC., EMPLOYER	RESPONDENT
ATLANTIC MUTUAL INSURANCE COMPANY, CARRIER	RESPONDENT

OPINION FILED NOVEMBER 10, 2003

Upon review before the FULL COMMISSION, Little Rock, Pulaski County, Arkansas.

Claimant represented *pro se*.

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

Decision of Administrative Law Judge: Affirmed.

OPINION AND ORDER

The claimant appeals from a decision of the Administrative Law Judge filed March 5, 2003, finding that the claimant failed to prove that he sustained a compensable occupational disease injury. Based upon our de novo review of the record, we affirm the decision of the Administrative Law Judge.

The claimant was employed by the respondent-employer as a temporary employee assigned to the Kimberly-Clark plant, where he was responsible for handling

feminine hygiene products. The claimant contended that he developed a rash on his hands, face, and toes, as a result of the combination of these products and the soap provided by the plant for washing hands. The claimant testified that he began to develop a rash after two days of handling the product and washing his hands there. He testified that his hands, face and toes began to swell and itch. The product that the claimant handled was in plastic bags and the work was performed in a sterile setting.

The respondents offered the testimony of Sadie Norwood, the safety coordinator, and Lisa Stevenson, the occupational health nurse. Both Ms. Norwood and Ms. Stevenson testified that no other employee had ever had similar complaints.

The claimant sought treatment for his alleged condition from Dr. William Freeman, his primary care physician. The claimant saw Dr. Freeman regularly for a variety of complaints, including itching around his fingers and toes. There is no indication in Dr. Freeman's records that the claimant related any of these problems to his employment at Kimberly-Clark. It is of note that each of Dr. Freeman's reports indicated that the claimant had an ongoing diagnosis of paranoid schizophrenia.

An "occupational disease" is any disease resulting in disability or death that arises out of or in the course of an occupation or employment of the employee. Ark. Code Ann. § 11-9-601(e) (1) (A) (Repl. 2002). Prior to the enactment of Act 1281 of 2001, the burden of proof was clear and convincing evidence in order for the claimant to prove he/she has a compensable occupational injury. However, Act 1281 changes the burden to a preponderance of the evidence. Ark. Code Ann. § 11-9-601(e) (1) (B) (Repl. 2002).

Ordinary diseases of life to which the general public is exposed are not compensable. Ark. Code Ann. § 11-9-601(e) (3) (Repl. 2002). The occupational disease must be "due to the nature of an employment in which the hazards of the disease actually exist and are characteristic thereof and peculiar to the trade, occupation, process, or employment and is actually incurred in his employment." Ark. Code Ann. § 11-9-601(g) (1) (A) (Repl. 2002). However, a disease may be considered compensable although the general public may contract the disease if the nature of the employment exposes the worker to a greater risk of the disease than the risk experienced by the general public or workers in other employments. Osmose Wood Preserving v. Jones, 40 Ark. App. 190, 843 S.W.2d 875 (1992); Sanyo Mfg. Corp. v. Leisure, 12 Ark. App. 274, 675 S.W.2d 841 (1984).

To constitute an occupational disease, there must be a recognizable link between the nature of the job and an increased risk in contracting the disease. Sanyo Mfg. Corp., supra.

There is absolutely no evidence in the record which indicates that the claimant's itching and swelling of his hands and feet was in anyway related to his work for Kimberly-Clark. The medical records indicate that the claimant went to Dr. Freeman several days after he last worked for Kimberly-Clark complaining of a number of problems. Dr. Freeman's notes do not mention any rash, discoloration, or swelling of the claimant's fingers, toes or face. Further, Dr. Freeman's notes fail to indicate that the claimant told Dr. Freeman that his onset of symptoms and complaints coincided with his employment with Kimberly-Clark or that he experienced a reaction while working there.

The record indicates that the claimant returned to Dr. Freeman on September 24, 2001. Dr. Freeman did not note any swelling, rash, or discoloration of the claimant's face, fingers or toes during his physical examination of the claimant on that date. Dr. Freeman's assessment of the claimant was basically the same as it was from the previous month's examination.

On December 23, 2001, over four months after he last worked for Kimberly-Clark, the claimant went to the emergency room complaining of itching of his right hand, swelling in his face, and a welts on his back. According to the emergency room records, the symptoms were attributable to an allergic reaction to Augmentin. The claimant had began taking this drug for two days prior to visiting the emergency room.

When we consider all of the evidence in the record, we cannot find that the claimant proved by a preponderance of the evidence that he sustained a compensable injury in the form of an occupational disease. In short, there is simply nothing in the record that establishes that the claimant's work at Kimberly-Clark was related to his alleged problems. Accordingly, this claim is hereby denied and dismissed.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Turner dissents.