

**NOT DESIGNATED FOR PUBLICATION**

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F205301

ANTHONY LACKEY,  
EMPLOYEE

CLAIMANT

SOUTHWIRE SPECIALITY PRODUCTS, INC.,  
EMPLOYER

RESPONDENT

OLD REPUBLIC INSURANCE COMPANY,  
INSURANCE CARRIER

RESPONDENT

OPINION FILED FEBRUARY 6, 2004

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

Claimant represented by HONORABLE BILL E. BRACEY, JR.,  
Attorney at Law, Blytheville, Arkansas.

Respondents represented by HONORABLE WILLIAM C. FRYE,  
Attorney at Law, Little Rock, Arkansas.

Decision of the Administrative Law Judge: Affirmed and  
adopted.

OPINION AND ORDER

The respondents appeal from a decision of the  
Administrative Law Judge filed April 9, 2003. The  
Administrative Law Judge entered the following findings of  
fact and conclusions of law:

1. The Arkansas Workers' Compensation Commission  
has jurisdiction over this claim.
2. The employee/employer/carrier relationship  
existed at all relevant times, including  
March 26, 2002, at which time claimant earned  
sufficient wages to entitle him to  
compensation rates of \$354.00 per week for

temporary total disability and \$266.00 per week for permanent partial disability.

3. The claimant has failed to prove, by a preponderance of the credible evidence, that he sustained a cardiovascular injury arising out of and during the course of his employment with Southwire Specialty Company as the result of an exposure to chemicals on March 26, 2002.
4. The claimant has proven, by a preponderance of the credible evidence, that he sustained a compensable pulmonary or respiratory injury which arose out of and during the course of his employment with Southwire Speciality Company, specifically from a chemical exposure on March 26, 2002, which caused internal, physical harm, requiring medical services and resulting in disability confirmed by medical evidence supported by objective findings.
5. A preponderance of the credible evidence reflects that the claimant's pulmonary injury was the result of an unusual and unpredicted exposure to chemicals at the workplace, and was the major cause of his injury, disability and need for medical treatment.
6. The claimant was temporarily totally disabled for the period beginning April 7, 2002 (when the claimant was hospitalized and first missed work) and continuing through June 10, 2002.
7. The claimant's healing period ended on or before June 10, 2002.
8. Respondents are responsible for all hospital, medical, and related expenses for claimant's pulmonary injury.

9. Claimant's entitlement to permanent disability benefits, if any, has been specifically reserved.
10. Respondents have controverted this claim in its entirety.

We have carefully conducted a de novo review of the entire record herein, and it is our opinion that the Administrative Law Judge's decision is supported by a preponderance of the credible evidence, correctly applies the law, and should be affirmed. Specifically, we find from a preponderance of the evidence that the findings of fact made by the Administrative Law Judge are correct, and they are, therefore, adopted by the Full Commission.

Thus, we affirm and adopt the decision of the Administrative Law Judge, including all findings and conclusions therein, as the decision of the Full Commission on appeal. All accrued benefits shall be paid in a lump sum without discount and with interest thereon at the lawful rate from the date of the Administrative Law Judge's decision in accordance with Ark. Code Ann. § 11-9-809 (Repl. 2002).

Since the claimant's injury occurred after July 1, 2001, the claimant's attorney's fee is governed by the provisions of Ark. Code Ann. § 11-9-715 as amended by Act

1281 of 2001. Compare Ark. Code Ann. § 11-9-715 (Repl. 1996) with Ark. Code Ann. § 11-9-715 (Repl. 2002). For prevailing on this appeal before the Full Commission, claimant's attorney is hereby awarded an additional attorney's fee in the amount of \$500.00 in accordance with Ark. Code Ann. § 11-9-715(b) (Repl. 2002).

IT IS SO ORDERED.

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OLAN W. REEVES, Chairman

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SHELBY W. TURNER, Commissioner

Commissioner McKinney dissents.

DISSENTING OPINION

I respectfully dissent from the majority opinion finding that the claimant proved that he had a compensable pulmonary or respiratory injury. Based upon my de novo review of the record, I find that the claimant failed to meet his burden of proof.

The claimant was employed by the respondent-employer as a Moco operator. The Moco machine treated wire with varnish. The epoxy thinner that was used to coat the wires was mixed in a five-gallon drum. On March 26, 2002, Mr. Delpenzo Davie, the day shift supervisor instructed the claimant to clean up around the cabinet where the five-

gallon drum was kept because it had leaked some of the epoxy thinner out. The claimant was instructed to use some rags to sop it up. This was not part of the claimant's daily routine. The claimant contended that the exposure to the epoxy thinner on March 26, 002, caused his pulmonary problems. The claimant was eventually hospitalized as a result of respiratory distress. The claimant was admitted to the hospital where he was put in the ICU for aggressive treatment.

The record is void of any medical records between April 8, 2002, and April 25, 2002. These were the records from when the claimant was in the hospital.

Ark. Code Ann. § 11-9-114 provides:

(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.

(b) (1) An injury or disease included in subsection (a) of this section shall not be deemed to be a compensable injury unless it is shown that the exertion of the work necessary to precipitate th 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, alternately, that some unusual and unpredicted incident occurred which is found to have been the major cause of the physical harm.

(2) Stress, physical or mental, shall not be considered in determining whether the employee or claimant has met his or her burden of proof.

The evidence demonstrates that the claimant was exposed to the chemical that allegedly caused the problem on a daily basis as part of his normal job as a Moco operator. Despite his alleged unusual exposure on March 26, 2002, the claimant failed to notify his supervisor or anyone else at the respondent-employer at the time of this exposure. The evidence indicates that the claimant finished working that day and continued to work the remainder of the week. The claimant also worked the first two days of the following week.

The medical evidence demonstrates that the claimant did not mention a chemical exposure at work when he was admitted to the emergency room on April 7, 2002, 13 days after the exposure on March 26, 2002. The first mention of a work-related exposure causing the claimant's problems appear in the emergency room records of April 25, 2002. At the time of his admission, the claimant also informed Dr. Butler that

he had no significant history of COPD or other major disease and denied taking any medication for a sinus stuffiness. However, the claimant, in the past medical history, indicated that he had COPD problems in the past on the emergency room admission of April 7, 2002.

Further, the opinion of Dr. Golden is based upon flawed history that the claimant gave to him. A medical opinion based solely upon claimant's history and own subjective belief that a medical condition is related to a compensable injury is not a substitute for credible evidence. Brewer v. Paragould Housing Authority, Full Commission Opinion filed Jan. 22, 1996 (E417617). The Commission is not bound by a doctor's opinion which is based largely on facts related to him by claimant where there is no sufficient independent knowledge upon which to corroborate claimant's claim. Roberts v. Leo-Levi Hospital, 8 Ark. App. 184, 649 S.W.2d 402 (1983). The claimant advised Dr. Golden that he had been in a tank where he could not stand up. However, the evidence demonstrates that the claimant was in an open area with fans and ventilation. More importantly, the pictures of the tank demonstrate that the claimant was not physically able to get inside it. The claimant told Dr. Golden that he was inside the tank. The

claimant was cleaning the bottom of a cabinet which had the chemical in it. Although the claimant probably did get light headed at the time he was cleaning out the cabinet, there was a window right there and the tank was not in an enclosed area that required the claimant to get in it. In short, Dr. Golden's opinion is based upon a flawed history that the claimant gave him.

The record is replete with inconsistencies in the claimant's testimony. Questions concerning the credibility of witnesses and the weight to be given to their testimony are within the exclusive province of the Commission. White v. Gregg Agricultural Ent., 72 Ark. App 309, 37 S.W.3d 649 (2001). When there are contradictions in the evidence, it is within the Commission's province to reconcile conflicting evidence and to determine the true facts. Id. The Commission is not required to believe the testimony of the claimant or any other witness, but may accept and translate into findings of fact only those portions of the testimony that it deems worthy of belief. Id.

The claimant offered the testimony of Elizabeth Bledsoe, a co-worker, who testified that she saw the claimant lying on a table breathing hard on the date of the

incident. Ms. Bledsoe also testified that she had seen the claimant in a similar condition on several other occasions.

The record contains inconsistent testimony about the amount of time that it took for the claimant to clean the cabinet out. The claimant testified that it took approximately five and half hours for him to clean the tank out. However, Mr. Davie testified that it should not have taken more than a few minutes. Based upon all of the other inconsistencies within the record, I assign more weight to the testimony of Mr. Davie than I do to the testimony of the claimant with respect to the amount of time that the claimant was exposed to the concentration of the chemical.

Ark. Code Ann. § 11-9-114(b)(1) requires that the exertion of the work necessary to precipitate the disability must be extraordinary and unusual in comparison to the claimant's usual work. Although it was not the claimant's "usual" job to clean out the cabinet and to sop up a spill, there was no evidence presented that the claimant had to exert any effort in excess of what he normally would as an operator of the Moco machine. Further, the claimant was not subject to unusual and unpredicted exposure as required in Ark. Code Ann. § 11-9-114(b)(1), in that he was exposed to

this chemical while performing his normal duties of operating the Moco machine.

In my opinion, evidence to support a finding that the claimant sustained a compensable pulmonary injury is sorely lacking. Therefore, for all the reasons set forth herein, I respectfully dissent from the majority opinion.

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KAREN H. MCKINNEY, Commissioner