

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F209666

KIRK WHITESIDE, EMPLOYEE	CLAIMANT
C. L. SWANSON CORPORATION, EMPLOYER	RESPONDENT
CINCINNATI INSURANCE COMPANY, CARRIER	RESPONDENT

OPINION FILED JANUARY 9, 2004

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

Claimant represented *Pro Se*.

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

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

The claimant appeals from a decision of the Administrative Law Judge filed May 21, 2003.

The Administrative Law Judge entered the following findings of fact and conclusions of law:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On all relevant dates, the relationship of employee-employer-carrier existed between the parties.

3. On all relevant dates, the claimant earned wages sufficient to entitle him to weekly compensation benefits of \$269.00 for total disability and \$202.00 for permanent partial disability.
4. The claimant has failed to prove by the greater weight of the credible evidence that he experienced any "occupational disease" during his employment with this respondent, including possible histoplasmosis.
5. The respondents have denied the occurrence of any occupational disease while the claimant was in their employ, particularly histoplasmosis, and 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.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Turner dissents.

DISSENTING OPINION

_____I must respectfully dissent from the majority opinion finding that claimant failed to prove entitlement to benefits for an occupational disease or an occupational infection.

The Commission spends a considerable amount of time discussing whether claimant actually has histoplasmosis. Claimant definitely had lymphadenopathy. One of the causes of this condition is by way of infections, such as histoplasmosis. Histoplasmosis is generally contracted as a result of inhaling the spores from chicken droppings. This condition is particularly endemic to northwest Arkansas as a result of the prevalent chicken

industry in that area. Claimant's job duties involved traveling to chicken processing plants and servicing the vending machines located there. The greater weight of the evidence indicates that histoplasmosis may be contracted after a prolonged exposure to the spores or from particularly heavy, acute exposures.

This case boils down to whether claimant has proven by a preponderance of the evidence that his condition (regardless of actual diagnosis) is causally related to his employment. Admittedly, Dr. Kyle Hardy appeared skeptical about whether a causal connection exists. However, Dr. Steven Hennigan, a specialist in infectious diseases and internal medicine, and Dr. Edwin Whiteside, board certified in allergy and immunology, opined that a causal connection exists.

In a report dated October 10, 2002, Dr. Hennigan stated the following:

Kirk Whiteside has been under my care for severe histoplasmosis. Virtually everyone of Kirk's age who has grown up in this area has been exposed to histoplasmosis and has had an infection during the earlier course of their life. Those who acquire reinfection is [sic] Kirk has,

almost always do so as a result of heavy acute exposure to histoplasmosis. For Kirk this almost certainly occurred during his work parking his service truck next to live haul trailers. Please do not hesitate to contact me if I can be of any further assistance in this matter.

Further, in a report dated February 7, 2003,

Dr. Whiteside stated the following:

* * *

I am Board Certified in Allergy and Immunology and due to the fact that I am Board Certified in Immunology, I have had a great deal of training and experience in different types of infections. When histoplasmosis invades the Lymphatic System of the lungs and especially the mediastinal (area around the heart and the vessels to and from the heart) it almost invariably requires a great deal of exposure to histoplasmosis for a pro-long period of time. This is exactly what has happened.

He was working for a vending company that supplied sandwiches and soft drinks for the Simmons Processing Plant. The area where he parked his truck to unload his supplies was next to the area where many chicken trucks would

park. These chicken trucks were open and they would use very large fans to blow on the chickens to keep them from getting too hot, which then blew chicken droppings and dust over into his area. In other words, he was exposed to chicken litter from many different chicken houses and it was a very high exposure for many years.

Histoplasmosis is commonly found in chicken litter. Approximately seven months ago, Kirk discovered he had a mass in his upper right chest. He saw an Internist that referred him to a General Surgeon who removed this mass and found that it was an enlarged lymph node. X-Rays demonstrated that he had large lymph nodes in the mediastinal area surrounding the heart. He became very short of breath and was hospitalized for nineteen days. The doctor also told Kirk that he had to use a "big gun" by using Amphotericin B. Even this powerful drug took a long time to show any improvement in his very severe histoplasmosis. He is still on an anti-fungal drug to keep his histoplasmosis from recurring. Usually the anti-fungal drug has to only be used for three months, but Kirk's infection was so severe his doctor is keeping him on the anti-fungal medication for twelve months.

* * *

Accordingly, based on claimant's testimony concerning his exposure to the chicken droppings as a result of his job duties, plus the opinions of Drs. Hennigan and Whiteside, I find that claimant has proven by a preponderance of the evidence that a causal connection exists between his respiratory difficulties and his employment. Therefore, the opinion of the Administrative Law Judge should be reversed.

SHELBY W. TURNER, Commissioner