

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F300238

VADA LINDSEY,
EMPLOYEE

CLAIMANT

FOREMAN SCHOOL DISTRICT,
EMPLOYER

RESPONDENT

ARKANSAS SCHOOL BOARDS ASSC. WCT,
INSURANCE CARRIER

RESPONDENT

OPINION FILED JUNE 2, 2005

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

Claimant represented by HONORABLE GREGORY GILES, Attorney at
Law, Texarkana, Arkansas.

Respondents represented by HONORABLE BETTY DEMORY, Attorney
at Law, Little Rock, Arkansas.

Decision of the Administrative Law Judge: Affirmed and
adopted.

OPINION AND ORDER

The claimant appeals from a decision of the
Administrative Law Judge filed May 27, 2004. 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 stipulations agreed to by the parties and
set forth above are hereby accepted as fact.
3. The respondents controverted this claim in
its entirety.

4. The claimant failed to prove by a preponderance of the evidence elements necessary to establish a compensable injury, or occupational disease under the Arkansas Workers' Compensation Law.

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

The Majority is affirming and adopting a decision by an Administrative Law Judge finding the claimant did not establish that she suffered an injury to her lungs as a result of a job related chemical exposure.

After reviewing the facts of the case, I believe the claimant did meet her burden of proof and is entitled to appropriate medical and disability benefits. For that reason, I respectfully dissent from the Majority's decision.

In July of 2000, the claimant went to work for the Foreman School District as a custodian. She continued employment in this capacity through September 2002. Among her duties was cleaning and maintaining the buildings and, during the summer months, stripping the accumulated wax off the floors and applying new coats. The claimant worked throughout 2000 and 2001 and most of 2002 without incident. However, at some point, the respondent changed some of their cleaning products. During the summer of 2002, the claimant had a negative reaction to some of the new chemicals. The claimant described one of the substances being used as "very strong smelling" and said that it "took her breath away." The claimant testified that during the stripping process,

she would mix the chemicals together in a bucket which would then be applied to the floor with a mop so as to dissolve the existing wax. She stated that she frequently had to go outside to get some fresh air because of the coughing and breathing difficulties these fumes caused her. The claimant also testified about another cleaning substance used to clean bathrooms. The substance was some type of anti-bacterial agent which she said caused a similar effect on her.

In June 2002, the claimant sought treatment from Dr. Kevin Kleinschmidt, her family doctor who practices in Ashdown, Arkansas. In his progress note dated June 17, 2002, the claimant was found to be complaining of coughing, sneezing, and chest congestion. He also noted "has been exposed to some chemicals for stripping floors."

When the claimant's condition continued to worsen, Dr. Kleinschmidt had the claimant hospitalized. In an admission note dated September 19, 2002, the doctor stated that the claimant is wheezing and has a sharp pain when she breathes. He also noted that she was suffering from a general malaise, with myalgias with pain in her legs, feet, and arms. He also sets out that she was suffering headaches, photophobia, and shortness of breath. He

diagnosed her with, among other things, acute bronchitis with a reactive airway component and possible chemical bronchitis from exposure to cleaning solutions.

While in the hospital, Dr. Kleinschmidt treated the claimant with medication and breathing therapy. The claimant improved somewhat during her hospital stay and was released to return home on September 24, 2002.

Eventually, Dr. Kleinschmidt referred the claimant to Dr. Christopher Bailey, a pulmonologist to evaluate the claimant's breathing problems. On November 22, 2002, he conducted an bronchoscope and determined that the claimant suffered from hemoptysis with bilateral lower lobe bronchiectasis. He also noted that the claimant appeared to be suffering from obstructive sleep apnea syndrome with acute chronic bronchitis.

Dr. Kleinschmidt had taken the claimant off work in September 2002, and did not return her to her duties until September 31, 2003. At that time, the respondent was not able to provide the claimant with a job without exposing her to chemicals similar to those which caused her problems. Accordingly, the claimant did not return to work with the respondent, nor any other employer.

In my opinion, the objective medical findings contained in the record clearly establish that the claimant is suffering from bronchitis resulting from a chemical exposure. The doctors who have treated her for this condition have consistently found that her condition resulted from chemical exposures at work. I do not see any basis for denying her claim.

Most of the Administrative Law Judge's Opinion discusses some of the claimant's other health problems and noted that they were not related to a chemical exposure. I certainly agree that the claimant's anxiety, depression, migraine headaches, stomach problems, and other conditions were not related to a chemical exposure. However, there is no allegation that they were. What the claimant has alleged is that exposure to the chemical at her workplace caused her to develop chronic bronchitis. This condition is not only disabling but has required her to seek a substantial amount of medical treatment. Further, the doctors who have been treating her for that condition, have consistently opined that her bronchitis was the result of her workplace chemical exposure. As the Court of Appeals has held on numerous occasions, while the Commission has the duty and the authority to evaluate medical evidence, it cannot

arbitrarily disregard doctors' findings and conclusions.

Swift-Eckrich, Inc., v. Brock, 63 Ark. App. 118

975 S.W.2d 857, (1998), citing Reeder v. Rheem Mfg. Co., 38 Ark. App. 248, 832 S.W.2d 505 (1992).

For the reasons set out above, I respectfully dissent from the decision denying benefits in this case.

SHELBY W. TURNER, COMMISSIONER