

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F305003

WILSON T. RING,
EMPLOYEE

CLAIMANT

STONE & SONS MONUMENT,
EMPLOYER

RESPONDENT

TRAVELERS INSURANCE COMPANY,
INSURANCE CARRIER

RESPONDENT

OPINION FILED MAY 10, 2005

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

Claimant represented by the HONORABLE FREDERICK S. SPENCER,
Attorney at Law, Mountain Home, Arkansas.

Respondents represented by the HONORABLE ROBERT H.
MONTGOMERY, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed in part and
reversed in part.

OPINION AND ORDER

The claimant appeals and the respondents cross-appeal
an administrative law judge's opinion filed April 5, 2004.
The administrative law judge found that the claimant "has
established by a preponderance of the evidence that he has
sustained a compensable gradual onset obstructive pulmonary
disease." The administrative law judge found that the
claimant "has failed to establish that he is entitled to

any permanent partial disability benefits for his scheduled foot injury in excess of the 10% permanent physical impairment already accepted and paid." After reviewing the entire record *de novo*, the Full Commission reverses in part and affirms in part the opinion of the administrative law judge. The Full Commission reverses the administrative law judge's finding that the claimant proved he sustained a compensable occupational disease. We affirm the administrative law judge's finding that the claimant did not prove he was entitled to permanent partial disability beyond the 10% anatomical impairment paid by the respondents.

I. HISTORY

Wilson T. Ring, age 57, testified that he completed "about the seventh" grade in school.

George P. Stone, Jr. testified that he owned Stone & Sons Monument. George Stone testified that the claimant began working for the respondent-employer in August 1975. Mr. Stone testified, "we have a very small business, monument business. And in the work, we get stone in on a truck. We unload it; we set it on the yard, and we clean it up. And we bring it in after it's sold, or it may be sold before we got it. And we make a stencil out of rubber. And

this rubber goes on the stone and design is on that. And then, after that, we sandblast it. And that is what, principally, Wilson did, was sandblasting....We use a Blastite (phonetically spelled) that, material that we blast with....And the material we use is different than sand, but it's basically the same thing....it's a manufactured product. And it's universally used in the monument industry."

The claimant's attorney questioned George Stone:

Q. In any event, when you spray it on the stone, does it not go up in the air and breathe it sometimes?

A. Well, it bounces around. We have a air system where that we pull air out of the sandblast room all time. And what comes out of the room while we are blasting is pretty well a bounce, if you want to call it. We have a cart that we take the stone into the sandblast room with. And then, we go in and we blow down the cart. And we have a door that we roll the cart in. We pretty well blow the dust off from standing in the door because the air is flowing through the room to the back and then out.

Q. Okay. In any event, you would agree, would you not, that there would be some of that dust to be breathed by anyone who would be doing the sandblasting?

A. Yes, over a period of time they will be some that a person, one way or the other, will be breathing.

George Stone testified that employees wore fiber masks which covered their nose and mouth. He agreed on cross-examination that the sandblasting room was "fairly ventilated." When asked on cross-examination regarding the first time the claimant claimed he had "a lung injury," Mr. Stone testified, "Sometime, Wilson had some problems. He's like me, he's had some weight problems. And when he injured his foot, he talked to me one time about not being able to exercise. And he had built a, something in a shed that he had where he could lay down and he could exercise to try to build up his muscles. And whether he told me then or not, it was in my mind that he was short of energy or what not. But I just don't know whether he told me or not. And I just can't help you there."

The administrative law judge examined George Stone:

Q. In the blast room where you had some ventilation and there was some material that was being blasted off the stone, when you turn the equipment off, the larger size particles, I'm assuming, would just fall to the floor or just fall whatever was in the room. Would there still be any dust in the air that you could see or

A. Yes. And that was, we blew the hand truck down and the air blows on out of the room at the time. And we'd more or less stand in the door. We had a mask on, but we would stand in the door and blast from a distance. Sometimes you had to go

in a little bit. But that was what I was getting back to, the pause. It didn't get all the air out in 15 seconds. So we would wait a little bit, hesitate, and use our own judgment. And then we'd go in and blow it down, and then we'd roll it back out to work where we wanted to....

Q. And what I'm trying to find out, I'm assuming - and I'm just assuming this - the material that you blasted onto the stone was probably a fairly large grain. And what I'm trying to find out is whether there was a very fine dust, a finer dust that was also in the air in addition to whatever the material was that you actually blew onto the stone....Because when he was doing the blasting, I mean, there would be material in the air; correct? There would be dust in the air?

A. Well, we stood outside of a room that had a moving wall like up and down....

Q. But while the blasting itself was going on, he was not being exposed to the material that was coming off of the stone? He was in a separate area behind some sort of wall you seem to have explained?

A. He would be exposed to some of the bounce back that would come through the crevices or the strips of where we worked through....

Q. If you can estimate, how many hours a day would Mr. Ring have been involved in the type of operation we're talking about where he would have had a mask on as opposed to not having a mask on?

A. In our blasting operation, like we do in our small shop, we do a lot of things. We go to the cemeteries and what not. And my estimation is that 20, 25% would be your time of blasting. Some weeks we didn't blast any and some weeks we would blast, on a rainy day, several hours. But year in, year out, I would say, 20, 25% of the time....Sometimes it seems like that's all we

did, but other times we never touched it. So 20, 25% of the time, of the overall work time.

The claimant testified on direct examination:

Q. Tell me as best you can what was the, the description that he made, that he gave of the sandblast room, tell us where the sand was coming out....

A. Yeah. It was like he said, the heavier grain, when you was blasting in there, you know, you had your ventilation suction that pulled it out through the back....

Q. And when you're sandblasting, that's where the particles would come out and you'd breathe it?

A. Yeah. Well, you'd get a little dust out there. Not much, but you'd get a little out of it. And -

Q. And then you'd go in and blow off the -

A. Yeah.

Q. And you'd get a lot of sand -

A. That's where you'd get your most dust, you know, when you're doing, blowing it out with that air pressure....

The parties stipulated that the claimant sustained "a compensable foot injury" in April 1999. The record indicates that a tree fell on the claimant's foot.

Mr. Stone testified that the claimant's last day of work was March 5, 2001.

In a July 2001 Physician's Report, Dr. Jeff Angel wrote that the claimant had sustained a crushed right foot with tarsal/metatarsal fracture and dislocation, and that the claimant had undergone surgery in March 2001. Dr. Angel pronounced maximum medical improvement on November 14, 2001. Dr. Angel assigned a 4% impairment to the body as a whole, 10% impairment to the claimant's right lower extremity. Dr. Angel assigned permanent restrictions of "no standing over 15 min. \bar{s} 15 min. rest." The respondents' attorney indicated at hearing that the carrier had paid the 10% anatomical impairment rating.

The claimant testified:

Q. Tell us when you first started having problems with your lungs.

A. Well, I've, I got to having some breathing problems back before I got hurt, but nothing serious, you know, that really bothered me that much. I'd just get, I just got a little short winded. And didn't really think it was all that much, you know, or anything to really be concerned about 'til I went to the doctor. And I believe it was Dr. Wright. Campos wasn't in that day, and I think it was Dr. Wright x-rayed me and found out that I, that I had this.

Q. COPD?

A. Yeah.

A radiology report on February 26, 2002 indicated that the attending physician was Dr. Campos, and that the claimant had been diagnosed with "chest congestion, coughing, wheezing." There was no causal connection of this diagnosis to the claimant's previous work for the respondent-employer. An x-ray of the claimant's chest was taken on February 26, 2002:

There is a mild prominence and irregularity of the cardiomediastinal silhouette, exaggerated by body habitus, less than maximum inspiration, and eventration or doming of the right hemidiaphragm. Otherwise, the lung markings are increased, especially perihilar aspect and each basilar aspect bilaterally. This is a combination of perihilar post inflammatory residual, including calcified granuloma plus patchy interstitial infiltrate and subsegmental atelectasis, especially within the right lower lobe. The costophrenic recesses and lung apices are maintained.

IMP: CARDIOPULMONARY DISEASE, MILD TO MODERATE, INCLUDING SUGGESTIVE EVIDENCE OF PULMONARY VENOUS HYPERTENSION, CHRONIC OBSTRUCTIVE PULMONARY DISEASE, AND MILD OR EARLY RIGHT LOWER LOBE BRONCHOPNEUMONIA.

A radiology report on March 5, 2002 indicated that the claimant had been diagnosed with "cough, difficulty breathing." There was no stated causal connection to the claimant's work. Another x-ray of the claimant's chest was taken on March 5, 2002:

Calcific granuloma in the right upper lung is noted. Elevation of the right hemidiaphragm is noted. Borderline cardiac prominence and interstitial and peribronchial change and degenerative changes in the spine. There is no acute process. There is no change from February 26, 2002.

IMP: NO OBVIOUS ACUTE PROCESS. EVENTRATION OF THE RIGHT HEMIDIAPHRAGM IS NOTED.

The record contains an Arkansas Rehabilitation Services General Medical Assessment dated April 11, 2002. The description of the claimant's disability was "Diabetes, residuals of work accident to right foot." The Primary Disabling Condition was "Type II Diabetes" with "Possible Neuropathy." The Secondary Conditions were "(2) Traumatic Injury R Foot with multiple surgical repairs (3) Moderate Osteoarthritis right foot (4) Hypertension - while on Antihypertension medication (5) Morbid Obesity (6) Hyperlipidemia."

A Psychological Screening Report on April 11, 2002 revealed the following general observations: "The client reported having his right foot severely crushed by tree. This accident has required five surgeries. Wilson also stated that he has diabetes and has been taking oral medication since 1990. He indicated having lower back pain. The client said he was lifting at work and his back

'popped.' He also hurt his left arm by pulling something heavy at work. Wilson stated that he has a history of fluid on the lungs and experiences breathing problems." The diagnostic impression was "Borderline Intellectual Functioning."

A radiology report on April 23, 2002 indicated a diagnosis of "bronchitis, dyspnea." Another x-ray of the chest was taken on April 23, 2002:

Cardiovascular silhouette reveals mild cardiomegaly with fullness of the mediastinum. Much of this is from a tortuous ectatic aorta, but I think I ought to exclude lymphadenopathy or enlarged vessels causing the fullness of the mediastinum. The patient has elevated right hemidiaphragm.

IMP: ELEVATED RIGHT HEMIDIAPHRAGM AND FULLNESS IN THE MEDIASTINUM APPEARS SLIGHTLY MORE PROMINENT THAN IT DID ON THE PREVIOUS STUDY. IF CLINICALLY INDICATED, FURTHER EVALUATION OF THE MEDIASTINUM MAY BE HELPFUL IN THIS PATIENT WHO HAS BEEN IN TWICE IN THE LAST TWO MONTHS FOR SHORTNESS OF BREATH AND DIFFICULTY BREATHING.

A radiology report on April 30, 2002 indicated a diagnosis, "Abnormal CXR." A CT scan of the chest with contrast was taken on April 30, 2002, with the following impression:

THERE ARE MULTIPLE SMALL MEDIASTINAL LYMPH NODES, THE LARGEST OF THESE IS APPROXIMATELY 8 TO 10 MM'S. THERE IS ALSO SOME MILD RIGHT HILAR ADENOPATHY. THIS RAISES THE QUESTION OF AN

INFLAMMATORY PROCESS. I WOULD RECOMMEND SERIAL FOLLOW UP. I SEE NO DEFINITE PULMONARY MASSES OR NODULES. THE ADRENAL GLANDS APPEAR ESSENTIALLY NORMAL.

The claimant testified that Dr. Louis Campos had been his doctor "for many years." The record contains a Residual Functional Capacity Questionnaire prepared by the claimant's attorney and signed by Dr. Campos on April 30, 2002. The Questionnaire contains the following language: "*Attach all relevant treatment notes, radiologist reports, laboratory and test results which have not been provided previously to the Social Security Administration* (italics in original)." Dr. Campos indicated that he had had "contact" with the claimant since 1996. Dr. Campos appeared to diagnose "Chronic R foot pain, COPD." Question 16 on the Questionnaire asked: "Please describe any other limitations (such as psychological limitations, limited vision, difficulty hearing, need to avoid temperature extremes, wetness, humidity, noise, dust, fumes, gases or hazards, etc.) that would affect your patient's ability to work at a regular job on a sustained basis." Dr. Campos appeared to write, "Depression limits working ability."

The claimant testified:

Q. And Dr. Campos has filled out some records in here. One of the things that might be confusing to His Honor is in the residual functional capacity evaluation that he did. He indicates that you told him that your lungs were not work related. Tell us what you meant, what you were saying there.

A. Well, Mr. Stone and them has always been like family to me, you know. And that was the last thing in the world I wanted to do, is get Mr. Stone in trouble. I don't want them to have to be out a lot of money for something like that, you know. So I told Dr. Campos that when I, when he told me this here.

Q. You told him what?

A. I told him that I didn't want them to get into any trouble with my lung disease....I know that that had to be the only thing, and he told me it was.

Q. He said it was what?

A. That it was related to my work....To the dust....He asked me if I'd ever smoked, and I told him no. And he said that's the only thing it could be, would be the dust.

Dr. Campos signed the following To Whom It May Concern document on April 30, 2002: "This man is a patient of mine. It is my opinion, stated within a reasonable degree of medical certainty, that this man's diagnosis of _____ is directly related to his 27 years of exposure to the dust from sandblasting monuments for the same employer." The record indicates that Dr. Campos marked through something

written on the blank and handwrote "COPD" underneath the blank.

Dr. Angel filled out a Physician's And Surgeon's Report on May 13, 2002. To the question, "Does the patient suffer any lung problems of which you are advised?", Dr. Angel wrote, "none known."

Bob White, a Vocational Specialist, provided a Vocational Assessment for the claimant's attorney on May 14, 2003. Bob White's assessment of the claimant did not describe any sort of lung disease or breathing problems. Mr. White noted that the claimant was "on numerous medications for diabetes, high blood pressure, cholesterol, and depression." Mr. White summarized his findings:

Objectively we have a 55 year old male (approaching advanced age) with a seventh grade education (limited) with a work history as a laborer with Stone Monument Company. He suffered injury to the right foot with subsequent vocational handicaps related to all areas of postural stress and primary strength activities....

Quoting White River Medical Center, Physical Rehab & Outpatient Services Bobby Denison, MSPT, "Summary/Recommendations: Mr. Ring completed the Functional Capacity Evaluation in approximately 3 hours, 30 minutes on June 21, 2001. The objective results of this evaluation revealed that Mr. Ring demonstrates poor ability to walk and stand, poor lifting ability, and poor ability to climb a ladder. Client would have

difficulty returning to his prior job at this time secondary to the aforementioned deficits. Client has a strong desire to return to his previous employer which he has been with for approximately 27 years and therefore we will begin a work conditioning program to see if we can improve work tolerances."

It is the opinion of this consultant Wilson Ring is not capable of performing even sedentary work on an on-going basis, would develop severe pain with any sitting, standing or walking over 30 minutes affecting attention and concentration and judgement and would not be a reliable, dependable employee, assuming he could work, on any consistent basis.

In summary, Mr. Ring is eliminated from the work force due to a combination of age, education, work history and a medically determinable physical impairment.

A pre-hearing order was filed on September 19, 2003.

The claimant contended that he sustained "a compensable gradual onset lung injury from breathing dust at work for 27 years which caused COPD. The claimant contends that he has been rendered permanently and totally (sic) as a result of his foot injury alone, or as a result of his foot injury and his COPD together." The parties stipulated that the respondents "have not accepted responsibility for any lung injury alleged by claimant." The respondents contended that the claimant "did not sustain a compensable lung injury while working for respondents. The respondents contend that

the claimant is not permanently and totally disabled and that he has sustained no wage loss."

The parties agreed to litigate the following issues:

- (1) Compensability of a gradual onset lung injury.
- (2) Permanent and total disability compensation or wage-loss benefits.
- (3) Controversion.
- (4) Attorney's fees.

On November 13, 2003, Dr. Campos filled out a PHYSICIAN'S AND SURGEON'S REPORT prepared by the claimant's attorney. Dr. Campos wrote, "Pt states report for COPD", and "Pt states not injury - DX: COPD." (It appears that the claimant's attorney was referring to this Report, and not the Functional Capacity Questionnaire, when he asked the claimant why he first stated the alleged occupational injury was not work-related.) Dr. Campos wrote that the claimant was "receiving updraft treatments at home."

The administrative law judge found, in pertinent part:

4. The claimant has established by a preponderance of the evidence that he has sustained a compensable gradual onset obstructive pulmonary disease.
5. The claimant has failed to establish ... that he has experienced a compensable permanent anatomical impairment for his chronic obstructive

pulmonary disease, therefore the claimant has also failed to establish that he is entitled to any award of wage loss benefits for that condition.

6. The claimant has failed to establish that he is entitled to any permanent partial disability benefits for his scheduled foot injury in excess of the 10% permanent physical impairment already accepted and paid.

The claimant appeals the administrative law judge's finding that the claimant failed to establish a compensable anatomical impairment related to the pulmonary disease, and the claimant appeals the ALJ's finding that the claimant is entitled only to the 10% physical rating for the compensable foot injury. The respondents appeal the ALJ's finding that the claimant sustained a compensable obstructive pulmonary disease.

II. ADJUDICATION

A. Whether the claimant proved he sustained a compensable occupational disease.

Ark. Code Ann. §11-9-601(e) (Repl. 2001) provides:

(1) (A) "Occupational disease", as used in this chapter, unless the context otherwise requires, means any disease that results in disability or death and arises out of and in the course of the occupation or employment of the employee or naturally follows or unavoidably results from an injury as that term is used in this chapter.

(B) However, a causal connection between the occupation or employment and the occupational disease must be established by a preponderance of

the evidence.

In the present matter, the Full Commission finds that the claimant did not prove by a preponderance of the evidence that he sustained a compensable occupational disease. George Stone testified that the claimant began working for the respondent-employer in August 1975. George Stone described "sandblasting" of monuments, which work involved using a material he referred to as "Blastite." Mr. Stone testified that employees would occasionally breathe the "dust" that occurred as a result of the sandblasting. As the Full Commission has noted *supra*, Mr. Stone could not identify a time when the claimant ever reported work-related breathing problems. Mr. Stone estimated that employees would breathe some of the "bounce back" around "20, 25%" of the time. The claimant testified, "you'd get your most dust, you know, when you're doing, blowing it out with that air pressure."

Dr. Campos indicated in 2002 that he had been in "contact" with the claimant since 1996. The Full Commission notes that the claimant did not work for the respondents after March 5, 2001. There is no treatment of record before the Commission demonstrating any sort of breathing problems,

including occupational breathing problems, during the claimant's entire employment tenure with the respondents, from August 1975 through March 2001. The claimant testified that he had "some breathing problems" before injuring his foot in April 1999, but that he "didn't really think it was all that much, you know, or anything to be concerned about, 'til I went to the doctor." The claimant did not seek treatment of record from Dr. Campos until February 2002, after he had been gone from the respondents' work place for nearly one year. The impression from an x-ray on February 26, 2002 was "Cardiopulmonary disease, mild to moderate, including suggestive evidence of pulmonary venous hypertension, chronic obstructive pulmonary disease, and mild or early right lower lobe bronchopneumonia." There is no probative evidence before the Commission linking these conditions shown in February 2002 to the claimant's work for the respondents from August 1975 through March 2001. Nor was such a causal connection identified by a treating physician in February 2002. The Full Commission is likewise unable to establish a causal connection between the claimant's work for the respondents and the "calcific

granuloma" and other findings shown in the March 2002 x-ray of the claimant's chest.

No work-related breathing problems were identified in the Arkansas Rehabilitation Services General Medical Assessment of April 2002. The Full Commission notes the Psychological Screening Report in April 2002, indicating the claimant's "history of fluid on the lungs and experiences breathing problems." No causal connection to the claimant's work was mentioned at that time. Nor was the radiologist's April 2002 diagnosis of "bronchitis" and "dyspnea (shortness of breath)" causally related to the claimant's work. The claimant's April 2002 Functional Capacity Questionnaire asked Dr. Campos to describe any limitations such as "dust, fumes," etc. related to the claimant's work. Dr. Campos only answered "Depression limits working ability."

The Full Commission also finds that the claimant was not a credible witness. The claimant admitted at hearing that he was not honest at one point with Dr. Campos. The claimant testified that he at first claimed his breathing problems were not work-related, because he "didn't want to get Mr. Stone in trouble." The record before the Commission does not demonstrate the amount of "Blastite," "bounce

back," or "dust," if any, allegedly breathed by the claimant at work. There is also no evidence before the Commission that George Stone would have been "in trouble" if the claimant had reported work-related breathing problems while the claimant was working for the respondent-employer. The Full Commission recognizes that Dr. Campos filled out the claimant's "To Whom It May Concern" form in April 2002, on which Dr. Campos first wrote something on an empty blank, then scratched that out and wrote "COPD" to the question, "It is my opinion, stated within a reasonable degree of medical certainty, that this man's diagnosis of _____ is directly related to his 27 years of exposure to the dust from sandblasting monuments."

It is true that medical opinions addressing compensability must be stated within a reasonable degree of medical certainty. Ark. Code Ann. §11-9-102(16)(B). Where a medical opinion is sufficiently clear to remove any reason for the trier of fact to have to guess at the cause of injury, that opinion is stated within a reasonable degree of medical certainty. Huffy Service First v. Ledbetter, 76 Ark. App. 533, 69 S.W.3d 449 (2002). Nevertheless, the Commission has the authority to accept or reject a medical

opinion and the authority to determine its probative value. Poulan Weed Eater v. Marshall, 79 Ark. App. 129, 84 S.W.3d 878 (2002). In considering the record before us, the Full Commission attaches minimal evidentiary weight to Dr. Campos' "opinion" written on the claimant's form on April 30, 2002, that is that the claimant had contracted "COPD" as a result of "27 years of exposure to the dust from sandblasting monuments for the same employer."

Finally, the Full Commission finds that the remaining documentary evidence of record does not bolster the claimant's case. Dr. Angel, the claimant's treating surgeon for the claimant's compensable injury to his foot, stated in May 2002 that he did not know of any "lung problems" suffered by the claimant. Bob White, the vocational specialist who opined in May 2003 that the claimant was totally disabled from working, did not describe any sort of breathing or lung problems. Dr. Campos' Report of November 2003 indicated "not injury - DX:COPD." To find that the claimant in the instant matter had sustained an occupational disease pursuant to Ark. Code Ann. §11-9-601 would require conjecture and speculation. Conjecture and speculation cannot be permitted to supply the place of proof. Dena

Constr. Co. v. Herndon, 264 Ark. 791, 575 S.W.2d 155 (1979). The decision of the administrative law judge in the present matter is reversed.

B. Whether the claimant proved he was permanently and totally disabled for the scheduled injury to his foot.

A claimant who sustains a scheduled injury is limited to the applicable allowances set forth in Ark. Code Ann. §11-9-521, and such benefits cannot be increased by considering wage-loss factors absent a finding of permanent total disability. Federal Compress & Warehouse Co. v. Risper, 55 Ark. App. 300, 935 S.W.2d 279 (1996). The administrative law judge in the present matter found that the claimant failed to prove he was entitled to permanent partial disability benefits exceeding the 10% anatomical impairment rating accepted and paid by the respondents. The Full Commission affirms this finding.

The claimant is age 57 and testified that he left school in about the eighth grade. The parties stipulated that the claimant sustained a compensable foot injury in April 1999. The claimant's compensable injury was a scheduled injury pursuant to Ark. Code Ann. §11-9-521. The claimant did not work for the respondent-employer after March 2001. After performing surgery on the claimant's

right foot, Dr. Angel pronounced maximum medical improvement in November 2001. Dr. Angel assigned only a 4% impairment to the body as a whole, corresponding to a 10% impairment to the claimant's right lower extremity. Dr. Angel assigned permanent work restrictions but did not suggest that the claimant was permanently and totally disabled. Dr. Campos did not state that the claimant was permanently and totally disabled. Dr. Campos opined in April 2002 that the claimant's "depression" limited his working ability; there is no indication of record that the claimant's "depression" was a compensable condition. The assessment from Arkansas Rehabilitation Services in April 2002 suggested a "sedentary-type" job, but there was no indication that the claimant was permanently disabled from all employment. We recognize that Vocational Specialist Bob White opined in May 2003 that the claimant was "eliminated from the work force." Nevertheless, based on the preponderance of the evidence before us, including the claimant's scheduled injury and resulting 10% impairment and the reports from Dr. Angel and Dr. Campos, the Full Commission finds that the claimant did not prove he was permanently and totally disabled.

Based on our *de novo* review of the entire record, the Full Commission reverses the administrative law judge's finding that the claimant proved he sustained a compensable chronic obstructive pulmonary disease. Pursuant to Ark. Code Ann. §11-9-601(e) (Repl. 2001), the Full Commission finds that the claimant did not prove he sustained an "occupational disease." The Full Commission affirms the administrative law judge's finding that the claimant did not prove he was entitled to permanent partial disability for his scheduled foot injury exceeding the 10% anatomical impairment accepted and paid by the respondents. This claim is denied and dismissed.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Turner dissents.

DISSENTING OPINION

I dissent from the majority opinion because I find that claimant's lung condition is compensable. Claimant worked in Respondent's monument business

engraving and installing headstones for approximately 27 years. During that time, one of the claimant's primary job duties was to sandblast the monuments. The testimony from the claimant and the business owner was that this involved at least 20% to 25% of the claimant's time, if not more. This activity caused the claimant to be exposed to sand particles and copious amounts of dust. While it was common practice for the claimant to wear a filter mask, it would not appear that these masks were sufficient to provide full protection considering the length of time the claimant was employed. It appears from the record that these masks were the white paper/cotton breathing mask that can be commonly purchased at many retail outlets. Further, x-rays performed, at the direction of the claimant's treating physician, noted the presence of calcified granuloma, interstitial infiltrate, and atelectasis (partially collapsed lung). These findings resulted in the conclusion by Dr. Lewis Campos, the claimant's treating physician and, Dr. John Bond, the radiologist performing the test, that the claimant had chronic obstructive pulmonary disease (COPD). Further, Dr. Campos opined

in a statement dated April 30, 2002 that the claimant's COPD was directly related to his exposure to the dust from sandblasting at his employment.

I, therefore, find that the Administrative Law Judge's finding of compensability should be affirmed.

SHELBY W. TURNER, Commissioner