

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F507639

DANIEL MCMILLON,
EMPLOYEE

CLAIMANT

PHARMERICA, INC.,
EMPLOYER

RESPONDENT

HARTFORD INS. CO. OF THE MIDWEST,
INSURANCE CARRIER

RESPONDENT

OPINION FILED OCTOBER 6, 2008

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

Claimant represented by the HONORABLE EVELYN BROOKS,
Attorney at Law, Fayetteville, Arkansas.

Respondents represented by the HONORABLE MICHAEL RYBURN,
Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The Arkansas Court of Appeals has reversed and remanded
for the Commission to make additional findings of fact.

Pharmerica v. McMillon, ___ Ark. App. ___, ___ S.W.3d ___
(Aug. 27, 2008). After reviewing the entire record *de novo*,
the Full Commission again finds that the claimant proved he
sustained a compensable occupational disease. We find that
the respondent-employer had knowledge of the injury.

I. HISTORY

Daniel David McMillan testified that he suffered from prior allergies and occasional headaches. Mr. McMillan testified that he began working for PharMerica as a pharmacy technician in about March 2005. The claimant was examined at hearing:

Q. And did you notice any problems with a water heater while you were there?

A. The first time I noticed anything, I had been there - we had a compressor that operated our hydraulic things that did press the medicine down - ...I'm going to say two or three days before we ended up having the episode - and I took the compressor outside and drained it of its water and took it apart....It was, like, all wet looking and there was mold and it just looked like it had been leaking for a while and it looked damp. I didn't touch it because I didn't really want to. It was kind of yucky. And the floor had kind of a - like almost like a calcium stain where it looked like it had been wet at one time and had dried up.

Q. Now, after you began working for PharMerica and before the incident on June 8th, did you notice any change in your health?

A. I felt fatigued. I just thought - at the time, honestly, I thought it was because I was working a lot of hours. I had more headaches that occurred as far as the frequency of them. I had more. It seemed like almost every day when I left I had a dull - not a severe, not a migraine, anything like that - they just seemed to be persistent. When I would leave work they would go away....I was fatigued, I had some shaking, a little bit of tremors, and some headaches.

Q. And what happened to you on June 8th of 2005?

A. Honestly, a lot of my memory is not real good. It almost happened like a train wreck. I came to work about 8 o'clock, went into my station. I want to kind of describe the facility if I can a little bit to kind of explain how that is....When you come in the door, the offices, the conference room, the lunchroom, and the input area where the pharmacists sit is handled - is a totally separate area. It's very narrow. That has one air unit and then that's all completely closed off except for a sliding window that we keep closed. And then there's the big square footage, which includes the utility room and all that is in the same ventilation. It includes our inventory of our drugs and our work space.

And I walked into there, shut the door as we usually do, and began working. Probably about 30 - 20 to 30 minutes into my shift my eyes started burning and I thought maybe I touched something, you know, an allergic-type reaction. I wasn't sure what it was with my eyes. They really started burning bad. I actually went to - we have over-the-counter supplies - I went to Amanda and asked her if I could write off some eye drops because I was just hurting, and we were allowed to do that.

And I did the eye drops and about, I'm going to say, 15 to 20 minutes after that I made this really strange thing....

I went to do license plates. There was a simple key command to get to that menu. I couldn't remember how to do that. I couldn't remember how to do my job. I just started - I call it blank moments, but I couldn't remember how to do things like my normal job things. I didn't remember what sequence to do things. I started filling empty bottles. I wasn't putting pills in them. I was mislabeling. I just got very scatterbrained....

Q. And how did you leave?

A. I finally - I said, "I want to take an early lunch." I took lunch right before the fire department came....

Q. Other than the confusion and the irritation of the eyes, were you having any other symptoms?

A. I was shaking....I had an onset - probably about 15 minutes after I got in there I had an onset of a headache....I as well had nosebleed....

The record contains an Incident Report from the Rogers Fire Department dated June 8, 2005:

Arrived (sic) on the scene all personal (sic) where (sic) out of building at the front door. Talked to manger (sic) Amanda Johnson of Pharmerica. Everyone is (sic) office has been having headaches she stated. She showed us the northwest corner of building a wet spot in the floor. The Rogers Water Office was on the scene, he stated that he checked the water meter and there was no water leak. We looked in the mech. room and could see water dripping down into the return air platform. We took the cover off the furance (sic) and there was one inch of water under platform. The problem appeared to be stopped up condensation drain line. We showed employees and the maint. rep. Walter Ash 531-0805 he had been in contact with building owners Charlie and Patsy Simmons and was told to get it repaired.

The record indicates that the claimant received emergency treatment on June 8, 2005.

A Form AR-3, Physician's Report dated June 9, 2005 described the alleged accident as follows: "Pt. states he worked on Saturday (6-4-05) & noticed headache & then

noticed yesterday he had bad headache - eyes burning & feeling out of it not connected" The Diagnosis appeared to be "exposure to mold."

Dr. Konstantin V. Berestnev reported on June 9, 2005:

At the request of and authorization by PharMerica, we are seeing Mr. Daniel McMillon. Mr. McMillon presents today for the injury from 06-04-05. The patient states that he worked on Saturday and noticed a headache and stated that the day before the clinic visit on 06-08-05, he said the headache got worse. His eyes started to burn. He was feeling out of it, unconnected. He also had some chest congestion and shakiness and he contributes everything to his exposure at work. They were told by the fire department who did an inspection at work that they had some mold. They are not sure about it. An environmental inspection is in progress right now.

The patient has the typical appearance of a patient with environmental allergies. He has periorbital halos. He has pale and edematous nasopharynx with nasal drainage present. He has pain to palpation of the maxillary sinuses. He has clear ear canals and normotensive tympanic membranes. Clear oropharynx. He has no cervical lymphadenopathy. He has clear to auscultation lung fields. Heart rate is regular without murmors, gallops or rubs....The spirometry is within normal limits. Pulse ox is within normal limits at 98%. X-ray of his chest shows no abnormality. X-ray of his sinuses shows some mucosal thickening in the maxillary sinuses.

Dr. Berestnev assessed, "Exposure to mold and environmental allergies with maxillary sinusitis." Dr. Berestnev advised the claimant "to continue to treat his

environmental allergies as the source of his symptoms. If it is found that mold was present at the work place then the work place needs to be disinfected and the water leak needs to be fixed."

Dr. Gary L. Moffitt reported on June 17, 2005:

At the request of and authorization by PharMerica, we are seeing Mr. Daniel McMillon. Mr. McMillon is seen today for recheck. He states he is having a severe problem with headache. It is a frontal headache. He really doesn't have much else in the way of symptomatology. He had had a problem with headaches prior to this exposure. He said that they would occur occasionally. He has had a constant frontal headache for the past week and a half....Prior to this exposure he was smoking one or two cigarettes a day, but he has discontinued this. Whenever he has had headaches before he would be light sensitive but not have any nausea, anorexia or balance problems. He thinks the headaches seem to get better whenever he leaves work....

Fundoscopy exam is normal bilaterally. There is no conjunctival erythema. Tympanic membranes are pearly white and intact. Oral mucosa is clear....Chest is clear. Heart has a regular rate and rhythm....Neurologic exam is normal.

I looked at his sinus films. They were found to be negative. Urinalysis is negative. He has a normal CBC. I am also drawing a comprehensive metabolic profile since he states that an insecticide had been sprayed on Monday.

He is to use over-the-counter medications for his headaches since the others don't seem to be working. He is to be seen again next week.

John Minden, a professional engineer, performed a Mechanical Inspection Report dated June 29, 2005:

On Monday June 27th two HVAC systems and a water heater were inspected at the PharMerica facility. The building is located at 412 North 2nd Street, Rogers Arkansas. The inspection was performed by me and Brian Eoff (an Arkansas licensed mechanical contractor).

The purpose of the inspection was to access (sic) the condition of the HVAC (heating ventilation and air conditioning) systems and their involvement with water damage reported within the facility....

Mechanical room discussion:

The system appears to be a typical HVAC split system common in light commercial buildings. It consists of a natural gas furnace/coil assembly sitting atop a plywood/gypsum board plenum. Return ductwork comes down from the ceiling and is attached to the top of the plenum. The furnace/coil sits atop the plywood plenum and it draws air from the plenum to be discharged upward through the supply ductwork directed back into the ceiling to the distribution ductwork.

Installed next to the air handler, also on top of the plenum, is a natural gas fired water heater. An electric air compressor is located on the floor.

There is visible water damage (stain & warpage) to the plywood plenum top. New appearing gypsum board covers the front of the plenum (it was reported to have been recently replaced). There was a dark line of stain along the plenum top to the wall interface behind the water heater. The gypsum board wall covering behind the water heater showed signs of water saturation sufficient to loosen (bubble) the wall paint for a level 6" above the plywood plenum top....

The water heater in the mechanical room is a natural gas fired, natural draft exhaust unit. It was reported to me that the water heater (or water heater accessory) had been leaking water and recently been repaired. There were signs of water damage beneath and behind the water heater....

A functional test of the water heater caused an immediate odor of combustion gas fumes in the Mechanical room....Later tests confirmed combustion gases were being discharged in the Mechanical room probably from this location....

Conclusions:

1. Water damage and removal/repair of water damaged materials was readily apparent in and around the Mechanical room plenum. The water heater and the AHU coil condensate drain are both potential sources for this damage. (The water heater was reported to have been recently fixed after a "prolonged" leak (of an accessory tank). Contractor records/invoices or occupant records would be required to verify this information.
2. The AHU coil condensate drainage pipe was effectively plugged. It is probable that during continuous air conditioner operation the drainage pipe would fill up and overflow the condensate pan. (No secondary overflow shut-off switches were present on either HVAC unit that we inspected that day).
3. The natural gas fired water heater has a significant flue gas leakage problem. CO was measured in concentrations up to 267 PPM (parts per million) in the Mechanical room.
4. The Mechanical room plenum (negative pressure portion of HVAC system) is not sealed airtight and the coil to furnace interface (positive pressure portion of HVAC system) has leakage (into the Mechanical room). Simultaneous operation of the Mechanical room air conditioner and water heater

will cause water heater flue gases to be drawn into the plenum and discharged into the pharmacy space.

5. No Outside Air (OSA) inlets are present in either of the two HVAC systems inspected....

Mr. Minden's recommendations included repairing or replacing the existing water heater and installing proper outside air ducts in order to obtain fresh air ventilation.

The record indicates that the claimant began treating with Dr. Nancy Jones on or about July 5, 2005, for complaints of allergic rhinitis/congestion and eustachian dysfunction.

A physical examination of the claimant's eyes on July 6, 2005 showed "some Shiners"; there was "Cobblestone" and "Erythema" in the claimant's throat; the claimant's nasal turbinates were moderately enlarged; and examination of the claimant's lungs showed "mild Crackles."

Dr. Edwin Whiteside, an allergy care specialist, reported on July 13, 2005:

We saw Daniel in our clinic for an allergy evaluation on July 6, 2005 and he was skin tested at that time. He is 28 years old with headache, fatigue, "shakiness," and frequent sinus infections....

1. Diagnosis: a) allergic rhinitis/conjunctivitis
b) eustachian tube dysfunction, probably IgE mediated.

2. Symptomatic medications. Allegra 60mg, Flonase, and Maxair.
3. Testing. Skin tests were positive to tree, grass, and weed pollen; housedust mite, mold, cat, dog, candida, and mosquito.
4. Immunotherapy. We have elected to start him on allergen immunotherapy....

Dr. Whiteside noted that Spirometry was normal and that the claimant would follow up in six months.

Dr. Whiteside corresponded with Debbie Doyle, R.N., on July 13, 2005:

Enclosed you will find the results of our evaluation on the six employees to determine if they have significant allergies. As requested, we also performed a pulmonary evaluation that included spirometry (pulmonary functioning) on each one of them. We have made every attempt to determine if any of these employee's symptoms could have been caused by being exposed to mold in the workplace. It appears with the available research we have at this time, there is no way a patient could inhale enough mold spores to cause a toxic reaction to mold that might be found in the home or workplace. However, it is possible to eat enough food contaminated with mold to have a toxic reaction following that ingestion.

If any of these employees have a significant allergy, especially to mold, they could have an increased difficulty with their allergies after exposure to increased mold spores. We found significant allergies in three of the six employees. They are Brian K. Smith, Mary A. Doss, and Daniel D. McMillion. They are all allergic to mold but that is not their primary allergen. Even if they did have mold in the workplace and were exposed to a significant amount, it would be highly unlikely that their difficulty now is related to that exposure.

As mentioned before, we did a spirometry on each employee and they were all normal except for Mary A. Doss and Aurora Cortez....

It appears to me that the difficulty these employees are having with their headaches and other symptoms would have to be due to another etiology other than allergy (IgE mediated disease). I was a Flight Surgeon in the Air National Guard and Air Force for a total of twenty years and it appears to me the difficulty they are experiencing is probably due to exposure to carbon monoxide and/or nitrogen dioxide.

Dr. Moffitt treated the claimant on July 14, 2005 for symptoms of headache and nausea. Dr. Moffitt stated, "Since there is a question now of possible carbon monoxide exposure, a carboxyhemoglobin level was drawn. I am recommending an MRI of his brain, but he is seeing Dr. Reginald Rutherford in Little Rock, a neurologist, and I don't see any reason to not defer until he sees Dr. Rutherford to see if he agrees that he needs an MRI."

The record indicates that LabCorp Kansas City received a specimen from the claimant dated July 14, 2005 with a report dated July 19, 2005. The Test and Result indicated, "Carbon Monoxide, Blood 2.4H %."

Dr. Reginald J. Rutherford provided a Consultation Report on July 20, 2005:

Mr. McMillon is seen for neurologic evaluation referable to complaints following carbon monoxide exposure in the work place....He works as a pharmacy tech for Pharmerica where he has worked for three and a half months.

Past history comprises tension headache, TMJ syndrome and allergies....

Mr. McMillon reports that shortly after commencing work at Pharmerica he noted increasing frequency in severity of headache as well as increasing sinus problems necessitating five courses of antibiotics. On June 8 he and co-workers became ill. There were initially evaluated for mold exposure. Subsequent to this a carbon monoxide leak was discovered in the work place related to a defective water heater. Mr. McMillon has been checked for carboxy hemoglobin which is mildly elevated but not abnormal in light of the fact that he is a smoker. His current symptoms comprise headache which is different and more severe than his pre-morbid headache, tremor, fatigue, cognitive difficulty, dizziness and impaired balance when he closes his eyes. His current headaches are characterized by pain beginning in the occiput radiating to the frontal region. He does feel that headaches and fatigue have improved since relocating his place of employment to Little Rock....

Mr. McMillon's neurological examination is within normal limits. In view of his complaint of tremor arrangements will be made for TSH and thyroid profile. The complaint of difficulty with balance when deprived of visual cues prompts a B12 level. His other complaints pertaining to headache, fatigue, dizziness and cognitive difficulty will be addressed via MRI study of the brain with contrast enhancement and neuropsychological evaluation by Dr. Judy White Johnson.

An MRI of the claimant's brain on July 22, 2005 was normal.

Dr. Judy White Johnson, a psychologist, wrote to Dr. Rutherford on August 19, 2005:

Thank you very much for your kind referral of Mr. Daniel McMillon for a neuropsychological evaluation including personality testing....

The overall pattern of neuropsychological test findings reflects Mr. McMillon's functioning, in general, in the average range of cognitive abilities with no focal impairments or significant problems. There are no indicators in the findings of "brain damage" or traumatic brain injury. He is showing symptoms of anxiety and depression with symptoms at a sub-clinical level. These are apt to reflect traits that are long-standing aspects of his personality functioning. There were no significant disruptions in his thinking, emotional problems or personality disorder present.

Dr. Rutherford noted on September 6, 2005, "MRI study of the brain is normal. Blood work revealed normal thyroid profile and normal B12 level. Neuropsychological testing proved negative for evidence of traumatic brain injury or brain dysfunction. Anxiety and depression were considered operant. Mr. McMillon was advised that he should not be using opioid based analgesics for his headache. Effexor XR is recommended for this current complaints....Clinical follow up will be required in one month."

A pre-hearing order was filed on October 31, 2005. The claimant contended that he "was injured on June 8, 2005. She (sic) has had injuries to her eyes, nose, throat, lungs and brain due to exposure to carbon monoxide and nitrogen dioxide." The respondents contended that the claimant "did not miss enough time from work to qualify for TTD. She was not injured in the course and scope of her employment. There are no objective medical findings. There is no medical opinion with any degree of certainty regarding causation. Since the claimant did not sustain a compensable injury, she is not entitled to a change of physician. The claimant has to prove a compensable injury to get any benefit."

The parties agreed to litigate the following issues:
"1. Compensability of the claimant's injuries due to carbon monoxide and mold. 2. Related medical."

Dr. Corwin Petty, Champions Family Clinic, wrote the following on August 31, 2006:

This letter is in regards to Aurora Carter, Marlene Seratt and Daniel McMillan. Based on their symptoms and the chronological order that these events took place, I believe with medical certainty that the above patients suffer from delayed neurological sequelae due to prolonged carbon monoxide exposure and subsequent poisoning.

The following is medical literature that supports my opinion....

Environmental CO exposure is typically less than 0.001%, or 10 ppm [6], but it may be higher in urban areas [7]. The amount of CO absorbed by the body is dependent on minute ventilation, duration of exposure, and concentrations of CO and oxygen in the environment.... A cigarette smoker is exposed to an estimated 400 to 500 ppm of CO while actively smoking [7]....The current Occupational Safety and Health Administration permissible limit for CO exposure in workers is 50 ppm averaged over an 8-hour work day

A hearing was held on September 11, 2006. The claimant testified that he was working 30 hours weekly for Harp's Pharmacy, but "I get very shaky towards the end of the work week. Just very tired. I still do have headaches from time to time, not to the extent they were then, but I just - I get wore out, which I never had a problem with, and a lot of shaking."

An administrative law judge found, "The claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury while working for the respondent on June 8, 2005." The claimant appealed to the Full Commission. The Full Commission reversed the administrative law judge and found that the claimant proved he sustained a compensable occupational disease pursuant to Ark. Code Ann. §11-9-601 (Repl. 2002). The Court of Appeals

has reversed and remanded "for the Commission to make additional findings of fact on whether the claim is barred and, if disposition of this issue so requires, make findings necessary to explain the basis of its conclusion on compensability."

II. ADJUDICATION

A. Occupational disease - causation

Ark. Code Ann. §11-9-601 (Repl. 2002) provides:

(e) (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 defined 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....

(3) No compensation shall be payable for any ordinary disease of life to which the general public is exposed....

(g) (1) An employer shall not be liable for any compensation for an occupational disease unless:

(A) The disease is 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 or her employment....

An occupational disease is characteristic of an occupation, process or employment where there is a

recognizable link between the nature of the job performed and an increased risk in contracting the occupational disease in question. *Sanyo Mfg. Corp. v. Leisure*, 12 Ark. App. 274, 675 S.W.2d 841 (1984).

In the present matter, the Full Commission again finds that the clamant proved he sustained a compensable occupational disease. The claimant admitted that he suffered from prior allergies and occasional headaches. After only a few months of working for the respondents, however, "I felt fatigued....I had more headaches....It seemed like almost every day when I left I had a dull - not a severe, not a migraine, anything like that - they just seemed to be persistent....I was fatigued, I had some shaking, a little bit of tremors, and some headaches."

The claimant credibly testified that an incident occurred at work on June 8, 2005. After being at work for about a half hour, the claimant began experience headache, burning eyes, shaking, and mental confusion. A fire department report on June 8, 2005 indicated that there was a water leak in the respondent-employer's premises. The claimant saw Dr. Berestnev on June 9, 2005. Dr. Berestnev reported that the claimant had "pale and edematous

nasopharynx with nasal drainage present....X-rays of his sinuses shows some mucosal thickening in the maxillary sinuses." These are clearly objective medical findings not within the claimant's voluntary control. A professional engineer reported on June 29, 2005, "CO was measured in concentrations up to 267 PPM (parts per million) in the Mechanical room." Although the record does not demonstrate the quantity of CO (carbon monoxide) the claimant was exposed to, the evidence demonstrates that the claimant was exposed to some level of carbon monoxide at work, and that this exposure was causally connected to the objective medical findings of record. A July 2005 physical examination showed more objective findings: "Shiners" in the claimant's eyes; cobblestone and erythema in his throat; "crackles" in the claimant's lungs. Dr. Whiteside opined in July 2005 that the claimant and several co-workers had been exposed to carbon monoxide at work. A July 2005 laboratory report showed that there was a level of carbon monoxide in the claimant's blood. The evidence before the Commission does not demonstrate that the objective medical findings of record were causally related to cigarette smoking by the claimant.

The record before the Commission does not demonstrate that the claimant sustained a traumatic or gradual injury to his brain. None of the reports from Dr. Berestnev, Dr. Moffitt, Dr. Jones, Dr. Whiteside, or Dr. Rutherford indicate that there was an organic brain injury. An MRI of the claimant's brain on July 22, 2005 was normal. Dr. Johnson noted in August 2005, "There are no indicators in the findings of 'brain damage' or traumatic brain injury....There were no significant disruptions in his thinking, emotional problems or personality disorder present." There is no probative evidence in the record demonstrating that Daniel McMillan sustained a brain injury as a result of his compensable occupational disease. Any assertion to the contrary would be based on sheer speculation and conjecture, which cannot supply the place of proof. *Dena Constr. Co. v. Herndon*, 264 Ark. 791, 575 S.W.2d 155 (1979). Nor does family clinician Dr. Petty's August 2006 description of "delayed neurological sequelae" demonstrate that the claimant sustained an organic brain injury.

The Full Commission otherwise finds that the instant claimant proved he sustained a compensable occupational

disease pursuant to Ark. Code Ann. §11-9-601. The claimant proved by a preponderance of the evidence that he was exposed to carbon monoxide at work, and that this workplace exposure caused the claimant's physical symptoms culminating on June 8, 2005. The claimant established a compensable occupational disease by medical evidence supported by objective findings, including pale and edematous nasopharynx, mucosal thickening, Shiners in the eyes, and crackles in his lungs. We also note the lab specimen report, dated July 19, 2005, showing an elevated carbon monoxide in the claimant's blood. We find that exposure to carbon monoxide at work, as a result of leaking water, was the cause of the claimant's objective medical findings and other symptoms and not other factors such as cigarette smoking or non-work related allergies.

The Full Commission finds that the instant claimant proved by a preponderance of the evidence a causal connection between his employment and the occupational disease. The occupational disease arose out of and in the course of the claimant's employment with this respondent-employer. We recognize that the claimant's exposure to carbon monoxide was not necessarily characteristic of his

occupation as a pharmacy technician. However, exposure to carbon monoxide from a leaking water heater was characteristic of the claimant's employment in this particular case. The claimant's employment placed him at an increased risk of developing symptoms from carbon monoxide exposure. The Full Commission therefore finds that the claimant's condition was compensable. See *Crossett School Dist. v. Gourley*, 50 Ark. App. 1, 899 S.W.2d 482 (1985).

B. Notice

The Court of Appeals has directed the Commission to address the issue of statutory notice. Ark. Code Ann. §11-9-603(a)(2)(A) (Repl. 2002) provides, "Written notice shall be given to the employer of an occupational disease by the employee, or someone in his or her behalf, within ninety (90) days after the first distinct manifestation thereof." The ninety-day statutory period does not begin to run until the employee knows or should reasonably be expected to know that he is suffering from an occupational disease. *Quality Service Railcar v. Williams*, 36 Ark. App. 29, 820 S.W.2d 278 (1991). Failure to give notice shall not bar any claim if the employer had knowledge that the condition or disease

arose out of and in the course of his employment; or if the Commission excuses the failure on the grounds that, for some satisfactory reason, the notice could not be given. Ark. Code Ann. §11-9-701(b) (Repl. 2002).

The Full Commission finds in the present matter that the respondent-employer had knowledge of the injury. The fire department report dated June 8, 2005 indicated that manager Amanda Johnson was aware of the culminating incident involving the claimant. Dr. Berestnev noted on June 9, 2005 that he was treating the claimant "At the request of and authorization by PharMerica." Dr. Moffitt reported on June 17, 2005 that he was also treating the claimant at the respondent-employer's request and authorization. The preponderance of evidence demonstrates that the respondent-employer had knowledge of the leaking water heater and the culminating incident on June 8, 2005.

Based on our *de novo* review of the entire record, and in accordance with the remand from the Court of Appeals, the Full Commission finds that the claimant proved by a preponderance of the evidence that he sustained a compensable occupational disease. The claimant proved that the respondent-employer had knowledge of the injury and

disease. The claimant proved that he was entitled to reasonably necessary medical treatment pursuant to Ark. Code Ann. §11-9-508(a). The claimant is entitled to reasonably necessary medical treatment for his fatigue, headaches, eyes burning, chest congestion, shakiness, environmental allergies, and eustachian dysfunction, all of which are causally related to the claimant's occupational injury. We note from the record that Dr. Rutherford planned to follow up with the claimant. The Full Commission has already awarded fees for legal services in our July 30, 2007 opinion reversing the administrative law judge's decision.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

PHILIP A. HOOD, Commissioner

Commissioner McKinney dissents.

DISSENTING OPINION

I must respectfully dissent from the majority opinion finding that the claimant has proven by a preponderance of the evidence that he sustained a compensable occupational disease by way of carbon

monoxide poisoning. I am still of the opinion that the claimant has failed to meet his burden of proof.

No one is disputing the fact that the claimant and several of his co-workers were exposed to carbon monoxide and mold at work. However, as noted by the Administrative Law Judge, the claimant has failed to produce objective medical evidence of a compensable injury. The claimant has been administered numerous tests and has been examined by a number of well qualified physicians in varying fields of medicine. With the exception of the common, everyday findings in allergy suffers in Arkansas of "pale and edematous nasopharynx with nasal drainage present.... X-rays of his sinuses shows some mucosal thickening in the maxillary sinuses" and "shiners" in his eyes, "cobblestone and erythema in his throat, and "crackles" in his lungs, the record is silent with regard to objective medical findings. It is axiomatic that the objective medical findings must be causally related to the alleged compensable injury. A bruise on the cheek while objective medical evidence is not sufficient to establish the compensability of a herniated cervical

disc. While one may show that a fall resulted in both the bruise and the herniated disc, each is a separate injury, requiring objective medical evidence to establish causation.

While the claimant admittedly proved the existence of objective medical findings associated with the common allergy, there is no evidence whatsoever that these findings are in any way causally related to carbon monoxide poisoning. Thus, the claimant may have proven the existence of a reaction to the mold, but he has not proven the compensability of carbon monoxide poisoning. On the contrary, not one internet search for carbon monoxide poisoning symptoms listed these or similar findings. Granted, the claimant complained of many of the subjective symptoms associated with carbon monoxide poisoning; however, the evidence with regard to objective medical findings speaks for itself. All objective medical testing yielded normal results, including the claimant's carbon monoxide blood test which showed 2.4H%. Dr. Rutherford unequivocally stated in his July 20, 2005, report that the claimant's

"carboxy hemoglobin which is mildly elevated but not abnormal in light of the fact that he is a smoker."

"In determining whether a party has met the burden of proof on an issue, Administrative Law Judges and the Commission shall weigh the evidence impartially and without giving the benefit of the doubt to any party." Ark. Code Ann. § 11-9-704(c)(4) (Repl. 1996). After weighing the evidence impartially, without given the benefit of the doubt to either party, I am constrained to find that the claimant has failed to prove by a preponderance of the evidence that he sustained a compensable occupational disease that is established by objective medical findings. A thorough review of all the evidence fails to disclose the existence of any objective medical evidence establishing a compensable injury.

Therefore, for all the reasons set forth herein, I must respectfully dissent from the majority opinion.

KAREN H. McKINNEY, Commissioner