

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F803342

JOSE RODRIGUEZ, EMPLOYEE	CLAIMANT
WHITE'S SIGN CO., INC., EMPLOYER	RESPONDENT
COMMERCE & INDUSTRY INS. CO., INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED OCTOBER 21, 2009

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

Claimant represented by HONORABLE NELSON V. SHAW, Attorney at Law, Texarkana, Arkansas.

Respondent represented by HONORABLE MELISSA WOOD, 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 April 20, 2009.

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. The employer/employee relationship existed on December 1, 2007.

3. The claimant's average weekly wage was \$414.68.

4. The claimant has failed to establish by a preponderance of the credible evidence that any of the medical problems that he experienced in December of 2007 were related to chemical exposure at work. The claimant has therefore failed to establish by a preponderance of the evidence that the medical condition at issue in this claim arose out of his employment; the claimant has therefore failed to establish by a preponderance of the evidence that he sustained a compensable injury.

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.

A. WATSON BELL, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Hood dissents.

DISSENTING OPINION

After my de novo review of the entire record, I must respectfully dissent from the majority opinion. I would award medical and indemnity benefits for the claimant's dermatitis caused by exposure to naphtha at work.

The claimant testified that he experienced significant skin reactions and swelling, headaches and breathing difficulties beginning on December 1, 2007 when he was exposed to naphtha, a petroleum-based paint solvent. The claimant worked on and off in December, with his last day of work being December 26, 2007. He went to a doctor on December 16, 2007 with a diagnosis of dermatitis. He was seen in January 2008, by dermatologist Dr. Young with a diagnosis of probable irritant dermatitis due to exposure to chemicals at work. The claimant attempted to return to work

on January 16, 2008. He experienced significant swelling of his face, especially around his eyes in March 2008. He filed a claim for unemployment benefits in March 2008 and claim for workers' compensation benefits on April 28, 2008.

For the claimant to establish a compensable injury as a result of a specific incident, the following requirements of Ark. Code Ann. §11-9-102(4)(A)(i)(Repl. 2002), must be established: (1) proof by a preponderance of the evidence of an injury arising out of and in the course of employment; (2) proof by a preponderance of the evidence that the injury caused internal or external physical harm to the body which required medical services or resulted in disability or death; (3) medical evidence supported by objective findings, as defined in Ark. Code Ann. §11-9-102(4)(D), establishing the injury; and (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and is identifiable by time and place of occurrence. Mikel v. Engineered Specialty Plastics, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

The claimant showed through his own testimony and the medical records that he suffered exposure to naphtha while using it to clean screens on December 1, 2007 and two

more times between then and December 26, satisfying the requirement of a specific incident identifiable by place and time. Cleaning the screens is clearly within the course and scope of his employment. The photographs of the claimant's face and hands and the medical records show that the claimant suffered physical harm by objective evidence. The question of causation is the most difficult element, however, the evidence shows that the claimant worked with naphtha and upon exposure, he developed skin reactions as well as headaches and breathing problems which improved when he was away from the naphtha, but returned when he returned to work around the naphtha.

The respondents focused on poison ivy as the cause of the claimant's physical ailments in December 2007 and January 2008. The claimant testified that he had a history of problems with poison ivy, and older medical records show a series of break-outs due to his severe poison ivy allergy. Of this, there is no question. However, the claimant and his wife credibly testified that the symptoms were different in December 2007 than he had in previous exposures. The claimant's wife explained that when the claimant had contact

dermatitis from poison ivy, he would have blisters and his skin would "run," but this did not occur in December 2007.

The claimant may have suggested that poison ivy could have been the root of his problems, however he is neither a medical professional nor charged with the responsibility for making a diagnosis. His testimony that his problems improved when he was away from his place of employment and the naphtha and that the problems returned when he returned to work is significant in connecting his exposure to naphtha at work to his dermatitis.

Also significant is the Material Safety Data Sheet for naphtha, which states that frequent or prolonged contact with the skin "may irritate and cause dermatitis; skin contact may aggravate an existing dermatitis condition." The sheet also stated that inhalation may be irritating to eyes and respiratory tract and may cause headaches, dizziness, anesthesia, drowsiness, unconsciousness, and other central nervous system effects, including death. The sheet also explains the methods for personal protection:

For open systems where contact is likely, wear safety glasses with side shields, long sleeves, and chemical resistant gloves. Where contact may occur, wear safety glasses with side shields. Where concentrations in air may exceed the limits given in this section and engineering, work

practice or other means of exposure reduction are not adequate. NIOSH approved respirators may be necessary to prevent overexposure by inhalation.

The fact that the claimant failed to effectively report a work-related injury of chemical exposure can be explained by two factors. First, the claimant's symptoms were not immediately attributable to the exposure to naphtha. The doctor opined, credibly, that the claimant's skin had become sensitized to the naphtha, causing a significant response to exposure. In fact, his medical history shows an inclination to dermatitis in response to an insult to his skin. Secondly, the testimony of the owner and office manager of the respondent employer, husband and wife, that the claimant failed to mention that he was ill and that he did say that he intended to retire, was not credible, self-serving as it was.

On the issue of notice, there is no testimony that the claimant related his skin problems to his work when he told his employer he was feeling ill. Therefore, the first evidence of notice is the claim form filed on January 11, 2007.

I find that the claimant has satisfied all the elements of compensability, and I would award medical

benefits for the care he received as detailed in the medical records and temporary total disability benefits for the 55 days he was unable to work due to the dermatitis. The award of indemnity benefits is subject to the claimant's child support obligations and limited to the period between January 11, 2008 when the respondents received notice of the injury and March 21, 2008 when he completed the unemployment benefits claim, stating that he was able to return to work immediately. There is no unemployment compensation issue, since the claimant was denied those benefits.

For the foregoing reasons, I must respectfully dissent.

PHILIP A. HOOD, Commissioner