BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. G806384

MICHAEL BEAN, EMPLOYEE — **CLAIMANT**

REYNOLDS CONSUMER PRODUCTS, EMPLOYER — **RESPONDENT NO. 1**

INDEMNITY INS. CO. OF NORTH AMERICA/
SEDGWICK CLAIMS MG'T SERVICES, INC.,
INSURANCE CARRIER/TPA — **RESPONDENT NO. 1**

STATE OF ARKANSAS,
DEATH & PERMANENT TOTAL
DISABILITY TRUST FUND — **RESPONDENT NO. 2**

OPINION AND ORDER FILED APRIL 29, 2021

Hearing conducted before the Arkansas Workers' Compensation Commission, Administrative Law Judge (ALJ) Mike Pickens, on January 29, 2021, in Little Rock, Pulaski County, Arkansas.

The claimant was represented by the Honorable Laura Beth York, Rainwater, Holt & Sexton, Little Rock, Pulaski County, Arkansas.

Respondent No. 1 was represented by the Honorable Michael E. Ryburn, Ryburn Law Firm, Little Rock, Pulaski County, Arkansas.

Respondent No. 2, represented by the Honorable David L. Pake, waived appearance at the hearing.

INTRODUCTION

In the Amended Prehearing Order filed September 29, 2020, the parties agreed to the following stipulations, which they affirmed on the record at the hearing:

1. The Arkansas Workers' Compensation Commission (the Commission) has jurisdiction over this claim.

2. The employer/employee/carrier-TPA relationship existed at all relevant times including May 1, 2018 when the claimant alleges, he began having symptoms of an occupational illness or disease which caused permanent damage to his kidneys and lungs.

3. The claimant's average weekly wage (AWW) is sufficient to entitle him to the maximum 2018 weekly compensation rates of $673.00 for temporary total disability (TTD), and $521.00 for permanent partial disability (PPD) benefits.

4. The respondents have controverted this claim in its entirety.

5. The parties specifically reserve any and all other issues for future determination or hearing.

(Commission Exhibit 1 at 1-2; Hearing Transcript at 7). Pursuant to the parties' mutual agreement, the issues litigated at the hearing were:

1. Whether the claimant has sustained a compensable occupational injury or disease injury within the meaning of the Arkansas Workers' Compensation Act (the Act), the symptoms of which began on or about May 1, 2018.

2. If the claimant's alleged occupational injury or disease is deemed compensable, whether and to what extent the claimant is entitled to medical and indemnity benefits.

3. Whether the claimant's attorney is entitled to a controverted fee on these facts.

4. The parties specifically reserve any and all other issues for future litigation and/or determination.

(Comms' Ex. 1 at 2; T. 7).

The claimant contends that on or about May 1, 2018 he began having symptoms which ultimately led to a diagnosis of pauci-immune Anti-Neutrophilic Cytoplasmic Autoantibody (ANCA) Vasculitis, also known as Granulomatosis with Polyangiitis (GPA), and formerly known as Wegener's Disease. He also contends he was diagnosed with silicosis. The ANCA vasculitis affected the claimant's lungs and kidneys, and he ultimately

underwent a kidney transplant. He contends his lung disease, kidney failure, and kidney transplant were the direct result of exposure to silica at the respondent-employer, Reynolds Consumer Products (Reynolds). He contends he sustained "a compensable occupational or disease injury to his kidneys and lungs," and that he is entitled to medical, and TTD benefits, and his attorney is entitled to a controverted fee. If the Commission awards TTD benefits to the claimant, and Respondent No. 1 is deemed to be entitled to a credit on any and all short-term disability (STD) benefits for which the claimant may have applied and received from any and all third-parties, the claimant contends his attorney's fee should be calculated based on the total amount of TTD benefits awarded before any credit is subtracted. The claimant reserves all other issues for future litigation and/or determination. (Comms'n Ex. 1 at 2-3; T. 11; 89-90).

Respondent No. 1 contends the claimant cannot meet his statutory burden of proof in demonstrating he has sustained a compensable occupational disease or illness. They contend the claimant's ANCA vasculitis is a rare auto-immune disease of unknown etiology and, therefore, is idiopathic in nature, and does not constitute a "compensable injury" pursuant to the Act. Respondent No. 1 denies the claimant's ANCA vasculitis was caused by silica exposure at work. They further contend that neither the claimant or anyone acting on his behalf notified Reynolds of the alleged occupational disease injury within 90 days as the applicable statute requires. Respondent No. 1 contends ANCA vasculitis has no known cause, and there exists no credible medical evidence the claimant's condition is work-related. Finally, Respondent No. 1 contends it is entitled to a statutory credit/dollar-for-dollar offset pursuant to ***Ark. Code Ann.*** Section 11-9-411, against any and all TTD

benefits the claimant may be awarded in an amount equal to the amount of STD benefits for which the claimant applied and received from any and all third-party(ies) related to his ANCA vasculitis. (Comms'n Ex. 1 at 3; T. 11-12; 90-92).

Respondent No. 2 waives its right to appear at the hearing and defers to the outcome of the litigation. Both Respondent Nos. 1 and 2 specifically reserve any and all other issues for future litigation and/or determination. (Comms'n Ex. 1 at 3).

STATEMENT OF THE CASE

The claimant, Mr. Ricky Bean (the claimant), is 37 years old. He has a high school diploma, and a two (2)-year certificate in auto mechanics from Quapaw Technical College. His employment history consists of working at a golf course, Mountain Valley Water, the Arkansas Department of Corrections (ADC), General Cable, and Reynolds. (T. 14). The claimant testified he began working at Reynolds in Malvern, Arkansas in June of 2016. (T.15).

The claimant's job title at Reynolds was "utility worker." This job, just as it sounds, required him to perform a number of different job duties such as using a front-end loader to feed one (1) or two (2) of the furnaces in the cast house, and to work outside of the cast house using a forklift to load, or to "maybe cut grass, but not very often." He also spent time in the air-conditioned break room when his services were not required for periods of time. The claimant testified he was not constantly in the cast house, which is where he worked when he was using the front-end loader to feed alloy materials into the furnaces. He testified further the cast house was not a closed structure, but was a building that was opened to the outside on both ends, which allowed air to flow through the building. He

testified that, “When you are a utility, a lot of the times you would be in the break room, which he said is both air conditioned and filtered. (T. 16-17; 52-54; 75).

As mentioned above, one (1) of the claimant’s job duties at Reynolds was using a front-end loader to feed one (1) or two (2) of the eight (8) furnaces used in making aluminum coils. (T.16-17; 75). The claimant testified he would add 300 pounds of zinc, iron, “silica,” and/or copper into the furnace for each batch of aluminum being produced. (T. 18-20). He also testified he spent most of his time in the cast house where he was using the front-end loader to feed “silica”, zinc, iron, and copper alloys into the furnaces. (T. 22-25). The claimant himself testified his work duties were different every day, and he was not running, or feeding alloy elements into a furnace “every single day.” (T. 24-26).

The claimant testified that “before May of ’18…sometime in April, maybe…I don’t have an exact date”, while he was working on #5 furnace, the #4 furnace was being torn down. The claimant testified that outside contractors had come into the plant and replaced all eight (8) of the furnaces at least once since he started working at Reynolds in June of 2016. He testified it takes a few weeks to tear down and replace a furnace. He testified that when the furnaces are replaced, silica dust is in the air and covers everything near the furnace being torn down. He testified he “was there several days when that was takin’ place” in late April and early May of 2018 where he was exposed to silica dust. (T. 24-28).

When his attorney asked him if his alleged exposure happened in “one day”, the claimant responded, “No. No. No.” He said while he believed it took “a few weeks…maybe a month” to tear down a furnace, he was “not real sure on that either.” The claimant alleged

in his testimony he was around a large quantity of "silica" in a short period of time in late April and early May of 2018. The claimant said he wore "[a] hardhat, glasses, and earplugs" as this was what his employer required him to wear. He said his employer did not require him to wear a mask nor did they say he needed one, but he "could've probably went and got one or found one," but his employer did not tell him he needed to wear one. He testified he did not have any other explanation as to how he had developed ANCA vasculitis; silica is a known environmental factor, and he was around a large quantity of it in a short period of time in late April and early May of 2018 when outside contractors were tearing down the #4 furnace. (T. 27-29; and 50).

Although he had worked at the Reynolds plant performing the same job duties as a utility worker for some two (2) years, and had worked when all of the furnaces had been torn down and replaced at one time or another, the claimant could not identify any specific days when he did or did not feel sick, and that he "did not believe" he was feeling sick at any time before the outside contractors started tearing down the #4 furnace in late April and early May of 2018. He testified he "was around a large quantity of it in a short period of time." He provided no explanation concerning why, if it was alleged exposure to silica that caused his diagnosed ANCA vasculitis, he only began getting sick in early May 2018 even though he had worked at the plant at the same job for two (2) years. (T. 28; 25-29; 57-61; 50; 13-72).

On cross-examination concerning his alleged significant exposure to silica, the claimant testified he was not constantly exposed to silica. He clarified he was alleging he

was exposed to silica when the outside contractors came in and broke down the furnaces and, specifically he was exposed to "a large quantity of it in a short period of time" in late April and early May of 2018. (T. 56).

The claimant testified further he has a hereditary, degenerative lower back problem. He has taken various over the counter (OTC) medications such as Aleve and Ibuprofen, as well as the narcotic medication, Tramadol, for this condition. His doctor has talked to him about surgery for this condition, but the claimant is of the opinion he is too young for surgery at this time. (T. 30-31).

When the claimant first went to see a physician on Thursday, May 3, 2018, at around 10:34 A.M., he apparently had not been at work when he began "feeling sick" and having some breathing problems." He testified he went to the doctor not just because of breathing problems, but because he was "feeling sick." (T. 32). The CHI St. Vincent/Hot Springs medical report for the claimant's first presentation for treatment on May 3, 2018, states he:

> 34-year-old-male presents for evaluation of elevated creatinine and BUNS. The patient is a body builder and uses creatinine, protein supplements and uses Aleve and NSAIDS frequently. The patient says that he also drinks mostly energy drinks and is not drinking much water…. Denies steroid or testosterone injection.

(Claimant's Exhibit 1 at 1). One of the CHI St. Vincent physicians who evaluated the claimant on this May 3, 2018, visit was Dr. Ross C. Brown. In his, "Summary Statement," dictated on the same day, Dr. Brown opined:

> Suspect patient's symptoms are likely coming from his creatinine and protein intake, as well as his NSAID abuse. Although intrinsic kidney

> function cannot be entirely excluded… .
>
> ***
>
> Further workup shows no elevation of CK but the patient's urine studies do show blood and protein which may be indicative of an intrinsic nephropathy. She [CHI-St. Vincent admitting physician, Dr. Bhattaral] admitted for further workup, IV fluid replacement….

(CX1 at 2; T.34) (Emphasis in original) (Bracketed material added).

The claimant was transferred to the University of Arkansas for Medical Sciences (UAMS) where he underwent a kidney biopsy and other diagnostic tests. He eventually was diagnosed with a rare autoimmune disease known as pauci-immune Anti-Neutrophilic Cytoplasmic Autoantibody (ANCA) vasculitis, also know as Granulomatosis with Polyangiitis (GPA), or Pulmonary vasculitis, and formerly known as Wegener's disease. (CX1 at 108-221). After having been placed in a medically-induced coma for a couple of weeks to stabilize his condition, and he was discharged from UAMS on May 23, 2018, with a diagnosis of, "Wegeners [sic] granulamatosis and ANCA vasculitis." (CX1 at 165-221; 221) (Bracketed material added).

After UAMS released him, the claimant returned home, but continued to be treated via chemotherapy, and was monitored by physicians at both CHI-St. Vincent in Hot Springs, and UAMS between May 28, 2018 and August 23, 2018. (CX1 at 222-262). The claimant was not working during this period of time. His mother had applied for him to receive STD benefits, which he received. (T. 44 and 48). A UAMS report dated August 23, 2018, of Dr. Manisha Singh, the claimant's nephrologist on his UAMS team of doctors noted the claimant, "reports feeling well, but has been drinking more protein shakes, having red meat, and increased workouts. His renal failure has become worse over the last month."

(CX1 at 254). The claimant was evaluated and approved for and received a kidney transplant. He underwent the transplant surgery at UAMS on March 20, 2019, which to date has been proven to be successful. (CX1 at 262-472). He continued follow-up care and medication counseling after his transplant. (CX1 at 473-893).

Reynolds's environmental manager, Mr. Brian Elliott, directly rebutted the claimant's testimony regarding the alleged handling of or exposure to "silica." Mr. Elliot explained the Reynolds plant in Malvern manufactures sheets of aluminum, and aluminum coils, the bulk of which is shipped to other facilities and further processed into aluminum foil. Mr. Elliott testified that "silicon," not "silica," is used in Reynolds's aluminum manufacturing process. Mr. Elliott explained there are no silica granules, or silica particles, or silica dust used in the manufacturing process. (T. 80; 74-79).

Mr. Elliott also directly rebutted the claimant's testimony concerning the length of time the claimant could possibly be exposed to any silica dust either when he was working, or when outside contractors were breaking-down the furnaces. Mr. Elliot explained that, depending on whether the claimant was feeding the alloy materials into one (1) furnace or two (2), the longest period of time the claimant would be in the cast house was an average of six (6) hours of a 12-hour shift if he was working two (2) furnaces, and roughly three (3) hours if he was working one (1) furnace. He explained further the cast house was not a closed building, but was open at both ends, and was a "fresh air-type thing." (T. 77-78). He testified the claimant would not be exposed to any silica dust in the cast house for an entire shift on a daily basis. (T. 79). Mr. Elliott went on to testify: "I don't see utility's out

there on the floor, I mean, there on a shift." He said most of the utilities, "spend a fair amount of time in the break room," which is air conditioned, "or they could be in another operator booth." (T. 79).

Mr. Elliott rebutted the claimant's testimony concerning the tearing down and rebuilding of the furnaces. He explained this was not a process that goes on continuously; and he described it as occurring "periodically, I mean, very episodic." He testified this process was conducted by independent contractors and not Reynolds employees, and may occur on day and night shifts. Mr. Elliott further testified the contractors cover the furnaces with plastic or visqueen to contain any dust, and that the contractor's clean up what they tear down. He said he does not "see stuff in the air just on a day-to-basis." (T. 79-81).

Finally, Mr. Elliott said he had heard talk around the Reynolds plant which he described as "hearsay" that the claimant had not been at work because of a "personal illness." (T. 82). He also authenticated the information on the insurer's first report of injury form which lists the claimant's last date of work as being "04/18/2018"; the date the employer was notified of the alleged injury as "09/24/2018"; the type of injury as, "Inhalation"; and the affected body part(s) as, "lungs and kidneys." (T. 82; Respondents' Exhibit 2). The Form AR-C the claimant's attorney filed with the Commission on or about September 24, 2018, lists the claimant's alleged date of injury as "5/1/18", and describes the alleged injury as having been the result of, "inhalation of chemicals causing lung and kidney failure and other whole body…". The claimant testified on cross-examination he knew about the allegedly work-related lung and kidney injuries sometime in May 2018 and

conceded he did not report the alleged injuries to his employer until September 24, 2018. (Claimant's Exhibit 2; T. 61-64).

In a letter written on the claimant's attorney's law firm's stationery, which appears to contain the signature stamp of one of the claimant's physician's from UAMS, nephrologist Dr. Manisha Singh, Dr. Singh appears to be responding to questions posed by the claimant's attorney. (CX1 at 886-887). In response to the question, "Do you believe, within a reasonable degree of medical certainty, that the injuries/conditions you treated Mr. Michael Bean for [sic] (after the 5/1/2018 occupational exposure) were caused by the exposure to silica while at work?" (Bracketed material added), Dr. Singh responds:

It is difficult to explain what caused the ANCA GN, but in his history the only thing that we were able to find that is known to be associated with this condition – was the exposure to silica. This is a rare disease and not much is known about it. We concluded that that must be the inciting event.

(CX1 at 887). In support of this conclusion, the only basis Dr. Singh offered was the evolving and patently inaccurate history the claimant gave her over an extended period of time, and an article offering a medically unproven theory that long-term silica exposure in older patients (with a mean age of 57 years and a mean silica exposure of 27 years) who had worked in the fields of mining, construction, and sandblasting, etc., had an "association" with ANCA vasculitis/GPA/pulmonary vasculitis. (CX1 at 887; Dr. Singh's Evidentiary Deposition taken January 21, 2021, at 46-53; Deposition Exhibit 6). Significantly, in her deposition Dr. Singh readily admitted that in this case there exists "No

proof" silica exposure caused the claimant's ANCA vasculitis, and that her opinion concerning "causation"' was "an educated guess." (CX3 at 46).

Respondent No. 1 introduced the written opinion of Dr. William Banner, a board-certified toxicologist. After reviewing all of the claimant's medical records and diagnostic results, Dr. Banner opined the claimant's condition could not be associated with exposure to silica at work; that ANCA vasculitis is a rare autoimmune disease of medically unknown etiology, or origin, or cause – i.e., a medically idiopathic condition. In addition to his review of the claimant's medical records and diagnostic test results, Dr. Banner based his opinion on several medical treatises, all of which conclude that ANCA vasculitis is an autoimmune disease the cause of which medical science has to date not been able to discover or identify. (Respondent No. 1's Exhibit 1 at 1-21).

The claimant was released to return to work without any restrictions in March 2020, and returned to the exact same job, a utility worker, at Reynolds. He was still working there as of the hearing date. As of the hearing date the claimant had not experienced any further breathing or other ANCA vasculitis-related physical problems since he returned to work almost one (1) year ago. (T. 48-50; 56-57).

DISCUSSION

The Burden of Proof

When deciding any issue, the ALJ and the Commission shall determine, on the basis of the record as a whole, whether the party having the burden of proof on the issue has established it by a preponderance of the evidence. ***Ark. Code Ann***. § 11-9-704(c)(2)

(2020 Lexis Supplement). The claimant has the burden of proving by a preponderance of the evidence he is entitled to benefits. *Stone v. Patel,* 26 Ark. App. 54, 759 S.W.2d 579 (Ark. App. 1998). ***Ark. Code Ann.*** Section 11-9-704(c)(3) (2020 Lexis Supp.) states that the ALJ, the Commission, and the courts "shall strictly construe" the Act, which also requires them to read and construe the Act in its entirety, and to harmonize its provisions when necessary. *Farmers' Coop. v. Biles,* 77 Ark. App. 1, 69 S.W.2d899 (Ark. App. 2002). In determining whether the claimant has met her burden of proof, the Commission is required to weigh the evidence impartially without giving the benefit of the doubt to either party**.** ***Ark. Code Ann***. § 11-9-704(c)(4) (2020 Lexis Supp.); *Gencorp Polymer Products v. Landers,* 36 Ark. App. 190, 820 S.W.2d 475 (Ark. App. 1991); *Fowler v. McHenry*, 22 Ark. App. 196, 737 S.W.2d 633 (Ark. App. 1987).

All claims for workers' compensation benefits must be based on proof. Speculation and conjecture, even if plausible, cannot take the place of proof. *Ark. Dep't of Corrections v. Glover,* 35 Ark. App. 32, 812 S.W.2d 692 (Ark. App. 1991); *Deana Constr. Co. v. Herndon*, 264 Ark. 791, 595 S.W.2d 155 (1979). It is the Commission's exclusive responsibility to determine the credibility of the witnesses and the weight to give their testimony. *Whaley v. Hardees*, 51 Ark. App. 116, 912 S.W.2d 14 (Ark. App. 1995). The Commission is not required to believe either a claimant's or any other witness's testimony, but may accept and translate into findings of fact those portions of the testimony it deems believable. *McClain v. Texaco, Inc*., 29 Ark. App. 218, 780 S.W.2d 34 (Ark. App. 1989); *Farmers Coop. v. Biles,* 77 Ark. App. 1, 69 S.W.2d 899 (Ark. App. 2002).

The Commission has the duty to weigh the medical evidence just as it does any other evidence, and its resolution of the medical evidence has the force and effect of a jury verdict. *Williams v. Pro Staff Temps.*, 336 Ark. 510, 988 S.W.2d 1 (1999). It is within the Commission's province to weigh the totality of the medical evidence and to determine what evidence is most credible given the totality of the credible evidence of record. *Minnesota Mining & Mfg'ing v. Baker*, 337 Ark. 94, 989 S.W.2d 151 (1999). A physician's opinion concerning compensability or permanent impairment must be stated within a reasonable degree of medical certainty. ***Ark. Code Ann.*** Section 11-9-102(16)(B).

The Claimant's Various, Apparent Legal Theories of Compensability

The Amended Prehearing Order filed September 20, 2020, which the parties acknowledged and affirmed on the record at the hearing, states the first and primary issue to be litigated was:

> 1. Whether the claimant has sustained a compensable occupational injury or disease injury [sic] with the meaning of the Arkansas Workers' Compensation Act (the Act), the symptoms of which began on or about May 1, 2018.

(Comms'n Ex. 1 at 2; T. 7) (Bracketed material added). In his post-hearing brief, as well as his attorney's seemingly evolving arguments and summation at the hearing, the claimant clarified he is using what may only be termed as a "shotgun approach" by arguing that one (1) or more of four (4) possible Act-based theories renders his rare autoimmune disorder, pulmonary vasculitis, ANCA vasculitis or GPA – all of which terms are synonymous – compensable and he has met the statutory burden of proof with respect to at least one (1) or all of the Act's specific requirements based on one (1) or more of these theories.

The claimant's post-amended prehearing order compensability theories are somewhat confusing and, apparently at least, mutually exclusive and contradictory; however, as best I can tell they are as follows. First, the claimant argues his ANCA vasculitis/GPA is the result of an injurious exposure(s) which occurred in late April or early May of 2018 and, therefore, meets the definition of a single-incident, accidental compensable injury, not an occupational injury or illness. Second, he contends he has sustained a single-incident compensable inhalation injury to his lungs pursuant to ***Ark. Code Ann.*** Section 11-9-114. Third, he argues in the alternative he has met the Act's requirements in proving his ANCA vasculitis/GPA constitutes a compensable occupational illness or disease pursuant to ***Ark. Code Ann.*** Section 11-9-601(e)(1)(A). Fourth, he contends his disease is compensable pursuant to the Act's silicosis/asbestosis statutes, ***Ark. Code Ann.*** Section 11-9-602, *et seq,* and 11-9-702*, et seq.* (Claimant's Post-Hearing Brief at 3-10; T. 40-43; 89-90).

This case requires the Commission to determine whether a rare autoimmune disorder which is defined medically as "idiopathic" constitutes a "compensable injury" within the meaning of the Act. I find the claimant has failed to meet his burden of proof in demonstrating his ANCA vasculitis, or GPA, constitutes a "compensable injury" within the Act's meaning based on any of his admittedly creative compensability theories. All four (4) of the claimant's legal theories of compensability relating to his rare, inarguably medically and legally idiopathic autoimmune disorder, ANCA vasculitis/pulmonary vasculitis/GPA, will be addressed in more detail below.

What is ANCA Vasculitis/Pulmonary Vasculitis/GPA And What Causes It?

This appears to be a case of first impression before the Commission. Therefore, it is vitally important we have a clear, medically and scientifically accurate sound understanding and perspective of the claimant's rare autoimmune disease of admittedly unknown etiology, or origin, or cause. ***Current Medical Diagnosis and Treatment***, page 309 (57th Edition, McGraw-Hill 2018) defines "pulmonary vasculitis"/GPA/Wegener granulomatosis as:

> …[A]n *idiopathic* disease manifested by a combination of glomerulonephritis, necrotizing granulomatous vasculitis [blood vessel inflammation] of the upper and lower respiratory tracts, and various degrees of small-vessel vasculitis….
>
> (Emphasis and Bracketed Material Added). ***Dorland's Medical Dictionary***, page 912 (32nd Edition, Elsevier 2012) defines the medical term "idiopathic" as being, "*of unknown cause or origin*; of the nature of an idiopathy."

(Emphasis added).

In laypersons' parlance, pulmonary vasculitis is a rare disease "characterized by inflammation of small- and medium-sized blood vessels (vasculitis) that results in damage to various organ systems of the body, most often the respiratory tract and the kidneys." National Organization of Rare Disorders, "Granulomatosis with Polyangiitis", https://rarediseases.org/rare-diseases/granulomatosis-with-polyangiitis/ . This article goes on to explain ANCA vasculitis is a rare disorder that most often affects people between 40 and 60 years of age; that the condition may present itself over a short or long period of time; and that while the pathogenesis (what occurs within the body at the cellular level when a person has the disease), the cause of this autoimmune disorder remains unknown.

Id. Indeed, to date while there have been a number of theories put forth as to the cause of ANCA vasculitis/GPA/pulmonary vasculitis, its cause remains unknown and, therefore, all of the medical literature on the disease describes it is "idiopathic" – i.e., of unknown etiology, origin, or cause. See, e.g., "Granulomatosis with Polyangiitis (GPA, formerly Wegener's), Cleveland Clinic, https://my.clevelandclinic.org/health/diseases/4757-granulomatosis-with-polyangiitis-qpa-formerly-called-wegeners (GPA is a rare disease of uncertain cause that can affect people off all ages); "Vasculitis", Mayo Clinic, https://www.mayoclinic.org/diseases-conditions/vasculitis/symptoms-causes/syc-20363435 ; "Pulmonary Vasculitis", Brown, https://www.ncbi.nlm.gov/pmc/articles/PMC2658676/ .

The Claimant's ANCA Vasculitis/GPA/Pulmonary Vasculitis is "Idiopathic," Both in the Medical and Legal Definition of this Term of Art and, Therefore, Does Not Constitute a "Compensable Injury" Within the Act's Meaning

There are more than 100 autoimmune disorders like ANCA vasculitis/GPA, which range from Addison's disease (from which former President John F. Kennedy, Jr. is known to have suffered), to Autoimmune hepatitis, autoimmune inner ear disease, autoimmune myocarditis, Celiac disease, Dermatitis hepatomas, Crohn's disease, Juvenile arthritis and Juvenile diabetes, Meniere's disease, Multiple sclerosis, Myasthenia gravis, Psoriatic arthritis, Raynaud's phenomenon, Reflex sympathetic dystrophy (RSD), Rheumatoid arthritis, Sarcoidosis, Sperm and testicular autoimmunity, Stiff person syndrome, Type 1 diabetes, Ulcerative colitis…and the list goes on. American Autoimmune Related Diseases Association, Inc. *"Autoimmune Disease List,"* https://www.aarda.org/diseaselist/ . While these over 100 autoimmune diseases affect different organ systems parts of the human

body, the all have one (1) important characteristic in common: they are all idiopathic in nature, as their cause is unknown to the medical and scientific community. *See all sources above; See also, "Autoimmune disorders",* MedLinePlus, National Institutes of Health/United States National Library of Medicine, https://medlineplus.gov/ency/article/000816.htm .

Just how rare are vasculitide autoimmune diseases like ANCA vasculitis/GPA? According to the Radiological Society of North America, the overall annual incidence (proportion or rate of people who develop the disease in a given time period) of this family of auto-immune disease is approximately 20-100 cases per million; and the prevalence (proportion of people who have the disease in a given time period) is 150-450 cases per million. "Granulamatosis with Polyangiitis," https://www.pubs.rsna.org. There are fewer than 200,000 GPA cases per year in the United States. This autoimmune disorder affects people of all ages, although it is "extremely rare" in babies (0-2 years of age); "very rare" in toddlers (3-5 years), "children" (6-13 years), teenagers (14-18 years), and young adults (19-40) years; and "rare" in seniors (60-plus years). Source: Mayo Clinic. As all the aforementioned independent medical sources conclusively demonstrate, ANCA vasculitis/GPA/pulmonary vasculitis is a rare autoimmune disorder which is medically idiopathic – i.e., of unknown etiology, or cause – in nature.

Likewise, based on the aforementioned medical definition of the word "idiopathic" as defined in applicable Arkansas case law, pulmonary vasculitis/ANCA vasculitis/GPA is "idiopathic" in the sense of this legal term of art. The ***Merriam-Webster Dictionary*** defines

the adjective "idiopathic" as "arising spontaneously or from an obscure or unknown cause…peculiar to the individual." Arkansas workers' compensation law defines an idiopathic injury similarly: one whose cause is personal in nature, or peculiar to the individual. *Kuhn v. Majestic Hotel*, 324 Ark. 21, 918 S.W.2d 158 (1996); *Moore v. Darling Fixtures*, 22 Ark. App. 21, 732 S.W.2d 496 (Ark. App. 1987). Since an idiopathic injury is unrelated to a claimant's employment, it is generally not compensable unless employment-related conditions contribute to the risk of injury, or aggravate the injury. *Little Rock Convention & Visitors' Bureau v. Pack*, 60 Ark. App. 82, 959 S.W.2d 415 (Ark. App. 1997). An idiopathic injury is not compensable unless the conditions of the employment contribute to the risk of injury by placing the worker in a position which increases the dangerous effect of the injury. *Kimbell v. Ass'n of Rehab Industry*, 366 Ark. 297, 235 S.W.2d 499 (1996); and *see Nu-Way Laundry & Cleaners v. Palmer*, 12 Ark. App. 31, 670 S.W.2d 464 (Ark. App. 1980), *Country Pride v. Holly*, 3 Ark. App. 216, 219, 624 S.W.2d 442 (1981); and *see* ***Larson Workers' Compensation Law,*** Sections 7.04 and 9.01 (Matthew Bender & Co., 2015).

Here, the overwhelming preponderance of the credible evidence of record, medical and otherwise – as well as the inarguable fact that ANCA vasculitis/GPA/pulmonary vasculitis is medically idiopathic, i.e., of unknown etiology, origin, or cause – conclusively demonstrates the claimant has failed to meet his burden of proof with respect to all four (4) of his creative compensability theories. Firstly, since this rare autoimmune disorder is medically – and even legally – idiopathic in nature, it is impossible for the claimant to demonstrate his rare autoimmune disease, ANCA vasculitis/GPA/pulmonary vasculitis

was caused by his work. *See, Nolen v. Walmart Associates*, 2021 Ark. App. 68 (Ark. App. 2021). Secondly, even if this were not the case, the provisions of the Act on which the claimant relies for his compensability arguments simply do not support, nor were they intended to provide the statutory authority supporting, the compensability of an autoimmune disorder which is inarguably medically idiopathic – i.e., of unknown etiology, origin, or cause. This is especially true in, and highlighted by, the facts of this case.

I. The claimant has failed to meet his burden of proof in demonstrating his medically and legally idiopathic autoimmune disease, ANCA vasculitis/GPA/pulmonary vasculitis, is the result of an inhalation lung injury pursuant to *Ark. Code Ann.* Section 11-9-114. In addition, the claimant has failed to meet his burden of proof in demonstrating his medically and legally idiopathic autoimmune disease, ANCA vasculitis/GPA/pulmonary vasculitis, constitutes either a compensable silicosis or asbestosis injury pursuant to *Ark. Code Ann.* Section 11-9-602, *et seq*.

The claimant's arguments that his ANCA vasculitis is compensable pursuant to ***Ark. Code Ann.*** Sections 11-9-114, or 11-9-602 are without merit. First, concerning the lack of medical or other credible evidence demonstrating the claimant has met his burden of proof with respect to either of the immediately aforementioned statutes, it must be noted the claimant's rare autoimmune disorder *is both medically and legally idiopathic*: medically speaking, the rare autoimmune disorder has no known cause; and legally it is a condition that arises spontaneously from an unknown or obscure cause, and is personal to the claimant. *See Kuhn* and *Moore, supra.* Since this rare autoimmune condition is idiopathic pursuant to the medical meaning of this term, it logically and reasonably follows the disease cannot possibly be deemed a legally compensable workers' compensation

injury under any of the claimant's apparent four (4) arguments of compensability.

Second, in order to prove he has sustained a compensable lung inhalation injury, pursuant to ***Ark. Code Ann.*** Section 11-9-114(a) and (b), the claimant must show an accident was the "major cause" (greater than 50% of the cause; *see* ***Ark. Code Ann.*** Section 11-9-(14)(a) of his condition; and that the physical exertion on the day of his alleged accidental injury "was extraordinary and unusual" in comparison to his "regular employment or, alternatively that some unusual and unpredicted incident occurred which is found to be the major cause of the physical harm." There exists absolutely no evidence whatsoever in this case that meets the criteria of this mandatory statutory threshold.

With respect to any alleged silicosis or asbestosis injury, ***Ark. Code Ann.*** Section 11-9-602(b) mandates that:

In the absence of conclusive evidence in favor of the claim, disability or death from silicosis or asbestosis shall be presumed not to be due to the nature of any occupation within the provision of this subchapter, unless during the ten (10) years immediately preceding the date of disablement the employee has been exposed to the inhalation of silica dust or asbestos dust over a period of not less than five (5) years, two (2) years of which shall have been in this state, under a contract of employment existing in this state.

While the claimant argues this statute should not bar him from having a valid, compensable claim pursuant to this statute since he alleges there exists "conclusive evidence in favor of the claim" (Claimant's Brief at 7-8), the objective medical and other evidence of record requires a contrary conclusion.

First, in her evidentiary deposition Dr. Singh readily admitted, as even a cursory review of the exhaustive medical record proves, the claimant has never had, does not have, nor has any doctor ever diagnosed him with silicosis. (Dr. Singh's Dep. at 52-53; CX1 at

1-893). Second, the record is completely devoid of any evidence, medical or otherwise, either alleging or demonstrating the claimant has ever been exposed to asbestos, or even been exposed to asbestos. (CX1 at 1-893). Consequently, since the claimant had only worked for Reynolds for a period of approximately two (2) years at the time of his alleged May 1, 2018 injury, he cannot meet the statute's five (5)-year requirement.

II. The claimant has failed to meet his burden of proof in demonstrating his medically and legally idiopathic autoimmune disease, ANCA vasculitis/GPA/pulmonary vasculitis, constitutes a compensable specific-incident injury pursuant to *Ark. Code Ann.* Section 11-9-102(16).

Although it is contrary to the parties mutually agreed first issue to be litigated at the hearing (Comms'n Ex. 1 at 2; T. 7), the claimant's primary contention apparently is that his clinically diagnosed condition of ANCA vasculitis constitutes a specific-incident injury pursuant to the Act, and not an occupational disease. (Claimant's Brief at 3-7). For any specific-incident injury to be compensable, the claimant must prove by a preponderance of the evidence that his injury: (1) arose out of and in course of his employment; (2) caused internal or external harm to the body that required medical services; (3) is established by medical evidence supported by objective findings; and (4) was caused by a specific-incident identifiable by time and place of occurrence. ***Ark. Code Ann***. § 11-9-102(4); *Cossey v. Gary A. Thomas Racing Stable*, 2009 Ark. App. 666, at 5, 344 S.W.3d 684, at 687 (Ark. App. 2009). The claimant must prove a causal relationship exists between his employment and the alleged injury. *Wal-Mart Stores, Inc. v. Westbrook*, 77 Ark. App. 167, 171, 72 S.W.3d 889, 892 (Ark. App. 2002) (citing *McMillan v. U.S. Motors*, 59 Ark. App. 85, 90, at 953 S.W.2d 907, at 909 (Ark. App. 1997). Based on the

preponderance of the credible medical and other evidence of record, I find the claimant has failed to meet his burden with respect to all of the aforementioned required elements of proof.

First, once again, it must be reiterated the claimant's diagnosed autoimmune disease, ANCA vasculitis/GPA/pulmonary vasculitis is, by definition, both medically and legally idiopathic. Therefore, it cannot properly be deemed to constitute a "compensable injury" pursuant to any of the Act's provisions.

Second, addressing the immediately aforementioned fourth element of proof first, the Form AR-C the claimant filed with the Commission lists his date of injury as "5/1/2018," as does the employer's first report of injury form. (CX2; RX2). Similarly, although he admitted under oath at the hearing he did "not have an exact date" as to when he allegedly was exposed to a significant amount of silica dust, he testified he was "gonna say probably sometime in April, maybe" of 2018. (T. 28). However, according to the employer's first report of injury form, the claimant's last day of work at Reynold's was well before May 1, 2018, but was April 18, 2018. (RX2). The claimant testified under oath further that his alleged significant exposure to silica dust did not happen on a single day, but happened over a period of time. (T. 27). Neither the claimant nor his nephrologist, Dr. Singh, could explain why, if the claimant's idiopathic autoimmune disease was somehow caused by silica exposure the claimant did not experience any problems whatsoever for thee almost two (2) years he had worked the same job at Reynolds before late April and early May, or why he has had no additional ANCA vasculitis-related problems since he

returned to the exact same job in March 2020 and was still working there in the same job at the time of the hearing. (Dr. Singh's Dep. at 51, 41). Based on the aforementioned facts, the claimant himself does not allege his disease was caused by a specific incident that is identifiable by time and place of occurrence. Moreover, it appears the claimant cannot identify with the required specificity the date of the alleged specific incident since his stated date of injury on the Form AR-C is May 1, 2018, but the last day he worked at Reynolds was April 18, 2018. Consequently, the claimant has not met his burden of proof with respect to legally-required fourth element of proof.

The claimant's proof concerning the other three (3) required elements of proof are based upon Dr. Singh's signature-stamped letter which was written on the claimant's attorney's law firm's stationery, and her evidentiary deposition testimony. (Claimant's Brief at 3). However, while the claimant argues Dr. Singh opined within a reasonable degree of medical certainty that the claimant's idiopathic autoimmune disorder was causally related to his alleged exposure to significant amounts of silica at work, a simple reading of Dr. Singh's deposition proves this is not an accurate reading, or even a reasonable interpretation of, her deposition testimony.

First, it is abundantly clear Dr. Singh's purported "causation" opinion was based on the claimant's inaccurate and incomplete testimony concerning his alleged exposure to "silica," as well as a single study that was in no way analogous to the facts of this claim, which theorized the "association" between long-term and significant silica exposure of much older men in totally different occupations. It is readily apparent she did not intend

for her opinion to be taken as an opinion concerning "causation" of what she agreed was an autoimmune disease the cause of which was unknown, and for which we have "no proof" in this case that the claimant's disease was even "associated" with his alleged silica exposure. (Dr. Singh's Dep. at 47). Dr. Singh further candidly admitted her opinion was nothing more than "an educated guess" – which certainly does not meet the "reasonable degree of medical certainty" statutory mandate for opinions concerning compensability. (Dr. Singh's Dep. at 45; 46; 43-49).

At this point it is important to note the significant – indeed, the dispositive – difference between "association" and "causation" as these terms are used with respect to medical and other scientific studies relating to population health. Two (2) variables in a medical or scientific study may be "associated" without their being a "causal relationship" between the variables. Most medical/scientific/epidemiological studies such as the one Dr. Singh references in her letter written on the claimant's attorney's law firm's stationery and in her deposition (CX1 at 887; Dr. Singh Dep., Ex. 6) focus on trying to establish "associations" between the variables which are the subject of the research, and *not* to demonstrate or prove "causation" or a "causal relationship." *See, e.g., "Association versus Causation, Module 1 – Population Health,"* pages 1-12, Boston University School of Public Health, Boston University Medical Center (April 16, 2021). https://sphweb.bumc.bu.edu/otit/MPH-Modules/PH717-QuantCore/PH717-Module1A-Populations/PHP717-Module1A-Populations6.html .

The question of "association" seeks to determine whether and to what degree a

certain health outcome occurs in people with a particular "exposure." "Association" is simply a statistical relationship between two (2) or more variables. On the other hand, "causation" means the exposure in question directly produces, or causes, the effect which is the subject of the research study. For example, as the Boston University Medical Center module points out, there is an association, or a correlation, between the number of people who drowned by falling into a swimming pool and films in which the actor Nicholas Cage appeared in a given year between 1999 and 2009. However, of course, this does not mean that there is a causal relationship between Nicholas Cage starring in a film, and people drowning in swimming pools. Likewise, statistics show Jewish women have a higher risk of breast cancer than do Mormon women; yet this certainly does not, nor should it be interpreted as meaning, that a woman's religious affiliation is a cause of breast cancer. (*Id.* at 1).

Similarly, again, as Dr. Singh readily admitted upon cross-examination in her deposition, the study she referenced in her letter and which she was asked to address in her deposition, between long-term silica exposure in men with a mean age of 57 who worked in jobs where they experienced significant silica exposure over a period of some 30 years not only was *not analogous to or even associated with* the claimant's alleged exposure, it was not proof of any association, much less a causal relationship, between the claimant's alleged silica exposure and his idiopathic ANCA vasculitis in this case. (Dr. Singh's Dep. at 45-51). Based on all the aforementioned evidence, the claimant has undoubtedly failed

to meet his burden of proof that his medically and legally idiopathic ANCA vasculitis constitutes a compensable specific-incident injury pursuant to the Act.

III. The claimant has failed to meet his burden of proof in demonstrating his medically and legally idiopathic autoimmune disease, ANCA vasculitis/GPA/Pulmonary vasculitis, constitutes a compensable "occupational disease" as defined in *Ark. Code Ann.* Section 11-9-601(e)(1)(A).

Finally, as the parties mutually agreed in the Amended Prehearing Order filed September 29, 2020, the primary question at issue is whether the claimant's medically and legally idiopathic ANCA vasculitis constitutes a compensable "occupational disease" within the meaning of ***Ark. Code Ann.*** Section 11-9-601(e)(1), (e)(3), and (g)(1)(A) (2020 Lexis Supp.). This statute provides as follows:

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

Therefore, to state a compensable claim for an occupational disease pursuant to the Act the

alleged disease must be: (1) a result of the nature of that particular employment or occupation; (2) be actually incurred in the employment; and (3) not be an ordinary disease of life. *Alcoa v. Vann*, 14 Ark. App. 223, 686 S.W.2d 812 (Ark. App. 1985). A disease may be compensable even if the general public can contract the disease if the nature of the employment exposes a worker to a greater risk of the disease than the risk experienced by the general public or workers in other employment areas. *Osmose Wood Preserving v. Jones*, 40 Ark. App. 190, 843 S.W.2d 875 (Ark. App. 1992); *Sanyo Mfg. Corp. v. Leisure*, 12 Ark. App. 274, 675 S.W.2d 841 (Ark. App. 1984). To constitute a compensable occupational disease, there must be a recognizable link between the nature of the job and an increased risk in contracting the disease. *Sanyo Mfg. Corp., supra.*

First and foremost, it must be reiterated the claimant's ANCA vasculitis is both medically and legally idiopathic and, therefore, not compensable. Second, as has already been discussed above, Dr. Singh's opinion is grossly insufficient to allow the claimant to meet his burden of proof with regard to any of his various theories of compensability, including this one.

Third, as Dr. Banner thoroughly explained in his report, which was supported by the medical literature attached thereto, ANCA vasculitis *has no known cause*. (RX1 at 1-21). The overwhelming majority of all publications and scientific research studies conclude this condition has no identifiable cause. The second article Dr. Banner attached in support of his opinion states the study's conclusion as follows:

Long-term silica exposure may be one of the exogenous factors contributing to ANCA production, however, *silica exposure alone, without typical silicosis*, *was not associated with ANCA positivity.*

(RX1 at 14; T. 1023).

In this case, the claimant was not exposed to silica on a long-term basis, and the claimant does not have silicosis, as both Dr. Banner and Dr. Singh confirmed. (RX1 at 1-21; Dr. Singh's Dep. at 52).

Fourth, in my own rather extensive research I could find only one (1) published case involving alleged silica exposure and ANCA vasculitis/GPA/pulmonary vasculitis, *Rizzo v. Applied Materials, Inc., and GlobalFoundaries, U.S., Inc.,* Memorandum Decision-Order, Case No. 6:15-cv-557 (N. D. N. Y. 2017). While this case certainly is not binding precedent, its facts and reasoning are instructive and persuasive. In *Rizzo,* the plaintiff, Mr. Rizzo, alleged his ANCA vasculitis/GPA was caused by his exposure to "nanosilica" while working at GlobalFoundries. Mr. Rizzo's case was built upon the testimony of one (1) alleged expert, Dr. Wang, the claimant's treating pulmonologist, who testified Rizzo's ANCA vasculitis was the result of his exposure to "nanosilica." Dr. Wang cited one (1) study that allegedly supported his opinion. All of the other experts involved in the case essentially testified ANCA vasculitis had no known cause, and that there existed no studies generally accepted in the medical community demonstrating that any industrial chemicals or other agents at any exposure level or any exposure conditions caused ANCA vasculitis/GPA. Consequently, the court threw out the testimony of the plaintiff's expert, Dr. Wang and, as a matter of law, dismissed the case based on the defendants' motion for summary judgment. The *Rizzo* case should give both the parties and the Commission an idea or perspective as to how strong the opinion is in the national medical community that ANCA vasculitis/GPA/pulmonary vasculitis is truly a medically idiopathic disease the etiology/origin/cause of which is, indeed, unknown.

Fifth, and finally, pursuant to ***Ark. Code Ann.*** Section 11-9-603(a)(2)(A):

Written notice shall be given to the employer of an occupational disease by the employee, within ninety (90) days after the first distinct manifestation thereof.

Here, the claimant himself admitted knowing about his condition in early May of 2018. (T. 61-64). The Form AR-C states the date of the injury is May 1, 2018. (CX2). Doctor Singh testified the claimant knew he had his condition in May of 2018. The claimant himself testified he did not ever notify his employer about the alleged occupational disease. No one in his family contacted the employer about filing a workers' compensation claim for an occupational disease. Medical records reveal the claimant was well enough to work out as of August of 2018. (CX1 at 222-226). If he was well enough to resume his workout regimen, he was well enough to notify his employer of his alleged occupational disease. Mr. Elliott, Reynolds's safety manager, testified the Form AR-C was the first notice that anyone at work had that the claimant was alleging a work-related injury or illness. The Form AR-C is dated Sept. 20, 2018. (CX2). The claimant did not comply with the notice statute, and has no justifiable reason why he did not do so.

Therefore, based on the law as applied to the specific facts of this case, and strictly construing the Act as the law requires as explained in more detail, *infra*, I find the claimant has failed to meet his burden of proof in demonstrating his ANCA vasculitis, or GPA, constitutes a compensable "occupational disease" within the Act's meaning. The preponderance of the credible evidence of record, medical and otherwise, conclusively demonstrates the claimant has fallen well short of meeting the required burden of proof.

Here, the preponderance of the credible evidence of record, medical and otherwise, reveals

the claimant has failed to meet his burden of proof in demonstrating his ANCA vasculitis – a disease which the medical literature defines as "idiopathic" in nature, and medical science readily concedes is a disease of unknown etiology, or cause – was work-related.

CONCLUSION

Ark. Code Ann. Section 11-9-1001 (2020 Lexis Repl.) entitled, "**Legislative declaration**", is a unique and rather extraordinary statement concerning the Arkansas General Assembly's legislative purpose and intent in amending our workers' compensation laws in Act 796 of 1993. This provision states:

> The Seventy-Ninth General Assembly realizes that the Arkansas workers' compensation statutes must be revised and amended from time to time. Unfortunately, many of the changes made by this act were necessary because administrative law judges, the Workers' Compensation Commission, and the Arkansas courts have continually broadened the scope and eroded the purpose of the workers' compensation statutes of this state. The Seventy-Ninth General Assembly intends to restate that the major and controlling purpose of workers' compensation is to pay timely temporary and permanent disability benefits to all legitimately injured workers that suffer an injury or disease arising out of and in the course of their employment, to pay reasonable and necessary medical expenses resulting therefrom, and then to return the worker to the work force….
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> ***
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> In the future, if such things as the statute of limitations, the standard of review by the Workers' Compensation Commission or courts, *the extent to which any physical condition, injury, or disease should be excluded from or added to coverage by the law, or the scope of the workers' compensation statutes need to be liberalized, broadened, or narrowed*, those things shall be addressed by the General Assembly and should *not* be done by administrative law judges, the Workers' Compensation Commission, or the courts.

(Emphasis added). While this strong statement of legislative intent has not been well received by

some, as an ALJ who recognizes my role is to apply the law and not to make it, I intend to abide by our elected General Assembly's clearly stated intent which has the very best interests of our state's workers' and employees in mind, as well as my oath as an ALJ. There exists no precedent, either authoritative or persuasive that my extensive research uncovered in Arkansas or in any other relevant jurisdiction finding any autoimmune disease of idiopathic origin constituted a valid cause of action in a court of law, much less a compensable workers' compensation claim.

The claimant was an amiable witness who has come to believe his rare, medically, and legally idiopathic autoimmune disease of unknown etiology, ANCA vasculitis/GPA/pulmonary vasculitis was the result of his exposure to silica at work. However, it is well-settled that regardless of a claimant's beliefs that his medical condition is work-related, this belief is insufficient in and of itself to satisfy the burden of proof the Act requires to establish a compensable injury. *Killenberger v. Big D Liquor*, Full Commission Opinion, Claim Nos. E408248 & E408249 (August 29, 1995). Moreover, one cannot help but reasonably question why, if the claimant truly believed his rare, idiopathic autoimmune disease was work-related, why would he return to work performing the exact same job, a job he has been performing since he was released without restriction to return to work in March 2020, during the height of the COVID-19 pandemic nonetheless? Also, if the claimant's rare autoimmune disease truly was caused by his work environment, why has he been able to work in the environment without incident or any further hint of illness since March of 2020, over one (1) year as of the date of filing of this opinion and order? Thankfully, the claimant's employer responsibly provides health insurance and other employee benefits that allowed him to both pay his medical bills and draw STD benefits for the period of

time he was off work as a result of his personal illness.

Consequently, respectfully, I cannot and will not open the proverbial Pandora's box by finding a medically and legally idiopathic autoimmune disease of unknown origin to constitute a "compensable injury" within the meaning of the Act. With over 100 existing autoimmune disorders of no known cause existing as of this date, such a decision would not only be a decision not grounded in scientific fact and evidence, but would totally be based on sheer speculation and conjecture, which our law does not allow. Deana, supra.

Moreover, it would constitute a vast departure from the existing body of workers' compensation (and for that matter, personal injury law) not just in Arkansas but in most all if not every state in the United States to find that a medically idiopathic rare autoimmune disease constitutes a compensable injury. If and when the Arkansas General Assembly in its collective wisdom ever deems it necessary and appropriate to amend our workers' compensation laws to change what is essentially a state policy determination squarely within their constitutional authority and outside that of the Commission and the courts, and to provide coverage for such autoimmune diseases, I likewise will follow the statute(s) as amended.

Therefore, for all the aforementioned reasons I hereby make the following:

<u>FINDINGS OF FACT AND CONCLUSIONS OF LAW</u>

1. The Commission has jurisdiction of this claim

2. The stipulations contained in the Amended Prehearing Order filed September 29, 2020, hereby are accepted as facts.

3. The claimant has failed to meet his burden of proof in demonstrating his medically and legally idiopathic and rare autoimmune disease, ANCA vasculitis/GPA/pulmonary vasculitis constitutes a "compensable injury"

within the meaning of the Act.

4. Specifically, the claimant has failed to meet his burden of proof in demonstrating his medically and legally idiopathic and rare autoimmune disease, ANCA vasculitis/GPA/pulmonary vasculitis constitutes a "compensable injury" pursuant to: ***Ark. Code Ann.*** Section 11-9-602 *et seq.*; or 11-9-114*;* or 11-9-102(4)(A)(1) *et seq.;* or 11-9-601 *et seq.*

5. The claimant failed and/or refused to comply with the employer notice requirements concerning an alleged "occupational disease" pursuant to ***Ark. Code Ann.*** Section 11-9-602(A)(2), and he had no justifiable reason for this failure and/or refusal. If he was well enough to have resumed his workout schedule prior to August 23, 2018, he was well enough to have given this statutorily mandated notice to his employer.

6. As a matter of both existing medical and scientific proof, the applicable law, and the facts of this case, the claimant's medically and legally idiopathic and rare autoimmune disease, ANCA vasculitis/GPA/pulmonary vasculitis is of totally unknown etiology, or origin, or cause. Overwhelming existing scientific evidence holds that – as is apparently the case with all of the some 100 identified and known autoimmune diseases – while medical science understands the pathophysiology of the disease (i.e., the physiological processes associated with the disease and how it affects the human body), the disease is classified as being a rare idiopathic autoimmune disease, meaning its etiology, or origin, or cause is unknown. To date only various scientifically unproven theories exist as to what factors are "associated" with the disease. There exists no proven medical or scientific evidence concerning what "causes" this rare autoimmune disease.

7. One of the UAMS physicians on the claimant's treatment team, Dr. Singh, a nephrologist with no particular demonstrated expertise in the etiology, or origin, or cause of any autoimmune disease much less of ANCA vasculitis, readily admitted her opinion concerning the cause of the claimant's condition was simply "an educated guess." As a matter of law, a physician's "educated guess" concerning causation or any other issue is the very definition of speculation and conjecture, does not constitute an opinion stated "within a reasonable degree of medical certainty" as the Act requires, and is entitled to little or no weight. See, *Deana, supra.*

8. Neither Dr. Singh's letter written on the claimant's attorney's law firm's stationery or her deposition testimony provided any credible medical evidence concerning the causation of the claimant's rare, medically, and

legally idiopathic autoimmune disease. Dr. Singh's opinion concerning causation was conclusory in nature and, by her own admission, was based merely on her inaccurate understanding of the claimant's job duties. Again, Dr. Singh admitted her opinion was simply "an educated guess." By definition, a "guess," educated or otherwise, does not constitute an opinion stated within a reasonable degree of medical certainty as the Act requires both for opinions related to causation, or permanent anatomical impairment.

9. Respondent No. 1's proffered medical expert, Dr. Banner, though also not a demonstrated expert in the etiology, or origin, or cause of autoimmune diseases, has some 30 years of experience in toxicology and related fields. Among other things, he reviewed the claimant's medical records and the results of his diagnostic tests. Dr. Banner opined the claimant's rare autoimmune disease, ANCA vasculitis/GPA/pulmonary vasculitis is medically idiopathic – i.e., of unknown etiology, or origin, or cause, and was and is not causally related to his alleged exposure to silica or any other substance at Reynolds. As the basis for his opinion, Dr. Banner cited articles from recognized experts in the field of autoimmune diseases that are generally accepted in the medical community. Moreover, Dr. Banner's opinion is consistent with the overwhelming body of the existing medical and scientific evidence and literature concerning ANCA vasculitis/GPA/pulmonary vasculitis and, therefore, is entitled to significantly more weight and credibility on these facts than Dr. Singh's "educated guess."

10. Since the claimant has failed to meet his burden of proof in demonstrating his medically and legally idiopathic ANCA vasculitis/GPA/pulmonary vasculitis constitutes a "compensable injury" or a compensable "occupational disease" pursuant to the Act, he is not entitled to an award of either medical or indemnity benefits.

11. The claimant's attorney is not entitled to a fee on these facts.

Therefore, for all the aforementioned reasons, this claim is hereby respectfully denied and dismissed. If they not already done so, Respondent No. 1 shall pay the court reporter's invoice within ten (10) days of its receipt of this opinion and order.

IT IS SO ORDERED.

____
Mike Pickens
Administrative Law Judge