

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. **G907570**

ERIC W. MOBLEY, EMPLOYEE	CLAIMANT
COMFORT SUITES OF BENTONVILLE, EMPLOYER	RESPONDENT
MARKEL SERVICE INC., INSURANCE CARRIER	RESPONDENT

OPINION FILED **FEBRUARY 14, 2022**

Hearing before ADMINISTRATIVE LAW JUDGE JOSEPH C. SELF, in Springdale, Washington County, Arkansas.

Claimant represented by EVELYN E. BROOKS, Attorney, Fayetteville, Arkansas.

Respondents represented by WILLIAM C. FRYE, Attorney, North Little Rock, Arkansas.

STATEMENT OF THE CASE

On December 2, 2021, the above captioned claim came before the Workers' Compensation Commission in Springdale, Arkansas, for a hearing. A prehearing conference was conducted on April 8, 2021, and a prehearing order filed that same date. A copy of the prehearing order has been marked as Commission's Exhibit No. 1, with modifications made on the day of the hearing. There was no objection to the modified prehearing order being made part of the record.

The parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this case.
2. The employee/employer/carrier relationship existed from October 2, 2019 through October 18, 2019.
3. The respondents have controverted the claim in its entirety.

The issues to be litigated are limited to the following:

1. Whether claimant sustained a compensable injury on October 2, 2019.

2. Whether claimant is entitled to medical benefits.

All other issues were reserved.

The claimant contends that “he was treating bed bugs in room 107. Lung, eyes, mental, skin damage due to insecticide and black mold poisoning. No PPE provided. No ventilation.”

The respondents contend that “the claimant’s breathing problems are not work related. In fact, claimant indicated his problems were not work related to Mr. Kellams. During this period, claimant was treating mold in a room. Respondent/employer then found out that the claimant was living in the room without permission. The claimant admitted he was living in the room he had treated for mold. The claimant then went camping November 4-8, 2019. He came back in and asked for a room to stay in because he did not have an apartment. This request was denied. The respondents do not have the medical records listed in the claimant’s prehearing filing. Also, it is unclear what benefits he is asking for at this time. His exam on November 10, 2019, indicated that he had bronchitis. He returned on November 15, 2019, and his lung exam was normal. A month later he complained of subjective blurry vision. He was noted to have age related cataracts and was given eye drops. There is no indication of the claimant being taken off work.”

From a review of the record as a whole including medical reports, documents, and having heard testimony and observed demeanor of all witnesses, the following decision is rendered.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at a prehearing conference conducted on April 8, 2021 and contained in the pre-hearing order (as modified at the hearing) filed that same date are hereby accepted as fact.
2. Claimant has failed to prove by a preponderance of the evidence that he suffered a compensable injury on or about October 18, 2019.

FACTUAL BACKGROUND

Before the hearing, the parties discussed the date of the injury. The prehearing order listed October 2, 2019, but claimant's counsel advised that date was used because it was the one on respondent's AR-1 form. After further investigation, claimant believed the incident that he said gave rise to his claim occurred on October 18, 2019; as claimant was employed for the entire month of October 2019, the change of the date did not create an issue as to insurance coverage in this matter and is of no consequence.

HEARING TESTIMONY

Claimant testified that he was 55 years old with a bachelor's degree in biology and chemistry and had worked in the field of environmental science. He began working at respondent Comfort Suites in January 2019. (TR.10) Claimant said he was a facilities engineer, which entailed keeping rooms available to rent through maintenance. Part of his duties included pest control. There was a company that sprayed the rooms and claimant coordinated with them to make sure the rooms were all done. He said that his main emphasis regarding pest control was on bed bugs. (TR.11) Due to his knowledge of chemistry, he began using a less harmful pyrethrin type solution to treat rooms for infestation. Claimant testified that the rooms were heated from 121 to 135 degrees as part of the bed bug eradication process. While heat alone can be a stand-alone treatment (TR.12), there were instances where a combination of an insecticide and heat was used. (TR.13)

On October 17, claimant had treated a room for bed bug infestation, including turning on the heaters. (TR.14) When he returned to that room on October 18, he entered the room and had to step around the heater, taking a step or two into the room. He said he remembered looking at the monitor on the heater and seeing it was 135. The next thing he remembered was a man named Geraldo

shaking him as he was lying with most of his body in the room and his head sticking out the door. He believed that there had been a bed bug bomb in there because Geraldo said that he had turned the heat off and was picking up the cans. (TR.15) Claimant said that the bombs went off in the room when it was at 135 degrees and caused thermal decomposition. According to claimant, that turns the bug bomb into carbon monoxide. His testimony was "I know it was two-cyanide and either two halides or two cyanides and a halide. So just the carbon monoxide alone is a death trap, and you start talking about those halides and cyanides, you know cyanide is a deadly gas."

Claimant said he went to the office talked to Chad (otherwise unidentified) and Kevin (later identified as Kevin Kellams the general manager). Claimant said he needed to go and wash off his skin because he was burning up and couldn't breathe. (TR.16) Claimant went home that day and did not return to work because he said he still couldn't breathe. His eyes were burning, and he had body aches like arthritis or something. Claimant further said he was sick to his stomach and his throat was burned. Additionally, claimant said he had a bad headache. Claimant returned to work but wasn't sure if it was the next day. He was told by Kevin to take it easy. Claimant worked on air conditioners to keep the rooms going because if the air conditioner shuts down, there is no money coming in. He said Kevin sent him home and paid him for several days that he didn't work (TR.17)

In the following weeks and months, claimant said he had a lack of energy and that he couldn't breathe. "It was hard to just basically get out of bed. I stayed sleepy a lot and I just felt foggy, kind of in a daze because I wasn't getting the right amount of oxygen." Claimant said that when he reported it to Chad, something was said about workman's compensation, but claimant was concerned that he would not earn as much money. Claimant said that he needed to go home and wash off because there was no wash station at the hotel. At some point, claimant said he mentioned to Kevin that he needed medical treatment. (TR.18)

Claimant said he received some medical treatment, but he tried to work for maybe two and a half weeks, during which time he'd work a little and then be out two or three days. Claimant took a scheduled trip to Mississippi to take his children fishing, but he testified he stayed in bed the whole week. Claimant went to MedExpress when he returned from Mississippi. (TR.19) Claimant declined to go to the emergency room as recommended by the doctor at MedExpress but was referred to a pulmonologist. However, it was going to be months before he could see the one suggested, (TR.20) so he located one in Jackson, Mississippi, which he said he saw several times.¹ Claimant said he was treated for issues with his eyes and his throat and gastrointestinal system. (TR.21) Claimant saw a neurologist because he maintains that before the incident on October 18, 2019, he did not have problems with his memory. (TR.22) Claimant also said that he had seen two different psychiatrists or psychologists for depression. Claimant also testified that he had never had problems with his blood pressure or with his lungs but was prescribed an inhaler for the latter. (TR.23) Claimant does not believe that he could return to work because he can't do anything that raises his breath up. He said that he feels almost lightheaded. His memory affects him during his daily tasks. Claimant had a fall at Walmart which injured his back, but believes he was not able to work before that fall.

On cross-examination claimant could not explain why he had not mentioned the witness named Geraldo when he was disposed several months earlier. Claimant said all he remembered was that he took steps into the room and passed the heater. The next day, he had an irritated throat, burning stomach, his skin felt like it was on fire, he couldn't breathe, he had a severe headache and body aches, (TR.25) he had a lack of energy and was in a state of bewilderment. Claimant said that he went home to change clothes and get back to work.

¹ The records submitted only show one visit in the pulmonologist's office and one conference by telephone. If there were other visits, none of the exhibits reflect such, or what took place during those visits.

Claimant said he first saw a doctor on November 10, 2019, at MedExpress. He disagreed with the report that said that he did not have any congestion, voice change or sore throat because he would not have told them that. (TR.26) The report further said that claimant denied swelling of the lips, swelling of the tongue, swelling of the throat, and denied anxiety but claimant said all of that was wrong. The report said, “normal voice, no hoarse, muffled or hot potato voice;” claimant said that was wrong. (TR.28)

After his November 15, 2019 visit, the doctor at MedExpress wanted claimant to go to the emergency room for his blood pressure and claimant admitted that he refused to go. (TR.29) Claimant went to an eye clinic, reporting blurred vision at distances and at nighttime. Claimant denied that he was told he had age related cataracts. (TR.30)

When asked about the report from Jackson Pulmonary, claimant testified that he was not told that the breathing test that was administered to him showed normal results. (TR.31) He disagreed with his doctor that his pulmonary function was in normal limits. (TR.32)

When asked about the report of his visit with Dr. Karas that recorded “no respiratory distress, clear bilaterally, no wheezing, rales or bronchial problems,” claimant did not know that it was a normal exam. (TR.34) There was no mention by Dr. Karas regarding any mental fog or other problems, to which claimant testified that he can’t say why it was not put in the report, but that he was clear with what was going on with him. Claimant denied telling Dr. Karas that he had a history of heavy drinking. (TR.35) In a subsequent record from Dr. Karas dated May 19, 2020, Dr. Karas recorded no sore throat, no hoarse voice, no shortness of breath, no cough, no chest pains, no palpitations, no headaches, no vertigo. Claimant denied he was asked those questions. (TR.37)

When seeing Dr. Mantinderpreet Singh, claimant denied blurred vision, double vision or eye pain, but said that was because he had his glasses on. (TR.38) Dr. Singh said that claimant denied

hoarseness, trouble breathing, snoring, trouble with breathing during sleep, wheezing and congestion, but claimant said that he never talked to Dr. Singh about it. (TR.39)

At the end of cross examination, claimant was asked what chemical was in the room on October 18, 2019. His answer was that he knew what he had put in there--pyrethrin- (TR.45) and spoke about some other chemicals that may have been there, but claimant never identified any chemical other than what he himself had put in the room.

On redirect examination, claimant said that his report of depression Dr. Singh referred not only to his fall at Walmart but also the insecticide poisoning that he alleges. (TR.47) Claimant said that the walking test that Dr. Portis gave involve him walking in the office. "I never walked more than three steps without stopping and letting somebody by."

Claimant introduced the deposition that he gave on May 5, 2021. This deposition was done before respondent had all claimant's medical records and before claimant hired his present attorney. Much of the testimony at the deposition is irrelevant to this claim, as it touched on claimant's work history and educational background. Respondent's attorney asked about the doctors that claimant had seen after his alleged injury and those records will be reviewed below in this opinion. Claimant was a bit clearer in the deposition testimony on what he believes happened on October 17 or 18, 2019. According to his deposition testimony, claimant said that he never used bed bug bombs, but rather used other safer chemicals that he had recommended. Claimant believes that a bed bug bomb was placed in the same room with a heater and as a result, causing the chemicals in the bed bug bomb to break down into various components such as carbon monoxide, cyanide, halide, and perhaps another one. "So basically, it's a recipe for a nerve gas on steroids." (CL.X.#4, pages 32-33)

Claimant said that he passed out after he had entered the room. He remembered opening the door and taking a couple of steps into the room and then the next thing he knows he was laying with

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his head outside of the door and that is where he woke up. He made no mention of another person there with him. Claimant denied that his claim was for black mold exposure. (CL.X.#4, pages 34-36)

Respondents called as its only witness, Kevin Kellams, who is the general manager of respondent Comfort Suites of Bentonville. Mr. Kellams said that he is the one that hired claimant and was serving as general manager at the time claimant maintains he was exposed to toxic chemicals. Mr. Kellams said that claimant was provided with respirators, and he disputed that goggles and dust mask were all that was provided. (TR.51) Mr. Kellams stated that if a customer or guest reported bed bug activity, the room would be inspected. If there was evidence of such activity, the linens would be stripped off the bed and remain in the room, then the heaters would be used to increase the temperature of the room to about 135 degrees for a period of 24 to 48 hours. If upon inspection there was no evidence of bed bugs, there might be an over-the-counter bed bug bomb to be on the safe side, but the two—heat and bug bombs-- were not used together. (TR.52)

Mr. Kellams said that on October 17, Mr. Mobley came to his office and reported that he was fatigued and out of breath. Mr. Kellams asked if there was a need to fill out workers' compensation forms or proceed with a workers' compensation claim, to which claimant said no. Claimant did not work on October 18 and returned on October 22. When claimant returned, he engaged in deep cleaning rooms which meant moving furniture around so the housekeepers could do more than just the normal dusting and vacuuming. (TR.53) After he returned on October 22, Mr. Kellams said claimant did not report any brain fog, burning down in his stomach, or chemical exposure. Claimant worked on October 28 and 29. On the morning of November 1, it appeared that a room that had not been rented showed activity in the room from the prior night. Mr. Kellams contacted claimant, and he admitted to staying in the room, which respondent Comfort Suites of Bentonville did not allow. (TR.54)

Prior to claimant leaving for his vacation, Mr. Kellams did not hear him complaining of any shortness of breath, any brain fog or any of the symptoms that he testified to. Mr. Kellams denied that he had any of the conversations with claimant as were related during claimant's testimony. (TR.55) Mr. Kellams recalled that as the claimant was returning from Mississippi, he called and asked if he could get a room for a couple of days because of an issue at his apartment. Because of the previous unauthorized use of a room, Mr. Kellams denied that request. Claimant did not return to work but instead filed for unemployment. Claimant remained on respondent Comfort Suites of Bentonville's payroll until April 2020. Mr. Kellams denied being contacted by claimant regarding the breathing problems or other effects from being exposed to chemicals (TR.56), and specifically stated that claimant did not relate the fatigue that he complained on October 17 to any incident.

On cross-examination Mr. Kellams said that on November 11, 2019, he received a text from the claimant that he had filed a worker's compensation claim and the only communication he could do would be through his attorney. (TR.57) At that point, Mr. Kellams started making notes while reviewing his phone records. He determined the last time he had spoken to claimant was November 10, 2019. Claimant and Mr. Kellams had text exchanges after November 11, 2019, but those did not relate to claimant's workers' compensation claim. (TR.58)

Mr. Kellams said that there were one or two other persons that might have dealt with pesticides, one who worked in maintenance and the other was a housekeeper. Mr. Kellams stated that there were respirators purchased in September of 2019 to deal with a black mold problem (TR.61), but he did not observe claimant wearing one for pesticide use. (TR.62) Mr. Kellams did not know of claimant having to take off work for any breathing problems during the ten months prior to the alleged incident and stated that in his opinion, claimant was a good worker.

REVIEW OF THE MEDICAL RECORDS

The parties largely eliminated duplicate records. This review will work through the records chronologically. Although claimant limited his claim to as per his contentions as set out in the prehearing order to “lung, eyes, mental and skin damage,” references to other complaints claimant made or findings by health care providers may be included in this review. Only records for the four conditions alleged will be considered in the adjudication of this matter.

Claimant testified his first doctor’s visit following the alleged incident of October 18 was a November 10, 2019 visit to MedExpress in Rogers, Arkansas. His subjective complaints were that he had inhaled some pesticides at work about three weeks previously and had trouble breathing since that time. Claimant complained of shortness of breath with movement as well as chest pain and fatigue. Under his review of symptoms, claimant reported chills, sweats, cough, shortness of breath, fatigue, and chest pains. He denied congestion, voice change, sore throat, diarrhea, and anxiety. His physical exam showed high blood pressure at 147 over 100 and a pulse rate of 102 beats per minute. Other than those abnormal vital signs, the only other abnormalities noted were that claimant had “crackles right lower lung field noted on exam, crackles left lower lung field noted on exam” and that his skin felt clammy to the examiner. The assessment and plan was based on a finding that claimant had shortness of breath and acute bronchitis. (R.X.1-4)

Claimant next went to Pleasant Crossing Eye Care in Rogers, Arkansas and was examined by Dr. Martina Webb-Haines. Claimant saw Dr. Webb-Haines on November 13, 2019. Claimant complained of blurred vision at a distance and during the night and reported that he had accidentally gotten chemicals in his eyes several times recently. The assessment after the examination was that claimant had a retinal hemorrhage, dry eye syndrome, myopia, and age-related nuclear cataract, all bilateral. Dr. Webb-Haines recommended that claimant follow up with his primary care physician for

blood work, begin using artificial tears for comfort and that he should return for care in a year for the cataracts. (R.X.8-9)

Claimant returned to MedExpress on November 15, 2019, complaining of a breathing problem which he again attributed to breathing chemicals at work. He said the medication he received at his first visit did not help him and he continued to feel shortness of breath. Claimant's blood pressure was 143 over 96 which was considered abnormal, but the rest of exam was normal. It was noted that claimant seemed anxious. Based on his complaints of chest pain, it was recommended that claimant go immediately to the nearest emergency department, but he refused transport to the ER, saying, "I have things I have to take care of." (R.X.5-7)

Claimant next saw Dr. Raymond Portis on January 16, 2020, at Jackson Pulmonary Associates in Jackson, Mississippi. Claimant's complaints in the history and present illness and the review of symptoms remained similar to what he had reported to MedExpress. Claimant reported a cough, dyspnea at rest and on exertion, wheezing, shortness of breath with activity, memory issues, sinus drainage and profuse sweating. In the review of symptoms claimant also noted muscle pain, weakness, anxiety, and depression. However, on the physical examination, Dr. Portis noted no abnormalities, and the pulmonary function test showed no obstruction, no restriction, and a normal gas exchange. Dr. Portis' assessment after the initial visit was "reactive airway disease" and concluded by noting that claimant said he had "an acute exposure to chemicals and molds and bed bugs." "I cannot rule out that the acute exposure is not causing his problems. PFT's normal. Will continue work up to look for parenchymal lung disease associated with acute exposure."

In an undated letter addressed to "whom it may concern,"² Dr. Portis stated that claimant

² Claimant listed this letter in his index as being from May 17, 2021, while Respondent included it as part of the January 16, 2020 records from Dr. Portis. May 17, 2021 appears to me to be the day the records were faxed to one of the parties. It is not essential to know the exact date the letter was composed, as it was obviously after claimant's

“gives a history of exposure to a gas-based fumigation product, under high temperatures, as well as black mold. He states he immediately passed out and was awoken when he was found, unknown time down. Since that time, he complains of shortness of breath, wheeze, fatigue. He states he isn’t able to perform job duties, or hobbies such as fishing.” Dr. Portis reported that the examination that he did reveal no abnormalities. Dr. Portis concluded with this paragraph:

“It is my opinion that Mr. Wade Mobley likely had a reaction to one or more of the elements used to fumigate the room of which he was exposed to. His pulmonary function based on in clinic testing are within normal limits. His CT scan shows no ongoing inflammation or interstitial disease or obstruction which would be seen in active reactive airway disease. This pulmonary testing doesn’t reveal any disease presently, but does not reflect what its function might be during the episodes he describes. Therefore, I cannot discredit his symptomology, but cannot prove it with the testing performed in the clinic without further exposure to the stimulus simultaneously, which will place him at greater clinical risk for compromise.” (R.X.18)

Claimant was next treated on April 9, 2020 at Karas Healthcare following a fall at Walmart. Under the subjective notes, there is no mention of any of the symptoms that claimant relates to his exposure to insecticides. The objective test of his respiratory system was normal.

On April 13, 2020, there was a telephone visit with Ms. Kelsey Camp, APRN at Karas Health Care. The subjective notation in that record says “patient states his breathing was not right and had follow-up with his pulmonologist in January on a chemical exposure. Is requesting this in the medical records. Denies cough, acute shortness of breath, fever... patient is currently moving to Batesville and unable to follow up on this but would like to establish with a new provider and have medical records documented.” (R.X.20-24) As this was simply recording what claimant told ARPN Camp, there were no objective findings recorded.

On April 28, 2020 claimant returned to Karas Health Care for what appears to be an in-person

only in-person visit to Dr. Portis’s clinic.

visit with Dr. Robert Karas. The exposure to insecticides was not mentioned and the objective examination showed no difficulties with claimant's respiratory system. (R.X.25-26). There was another telephone conference with Karas Health Care on May 14, 2020, again with APRN Camp, in which claimant was seeking a referral to a neurologist in Batesville, Arkansas, where he had recently moved. The record records that claimant reported he had "a chemical inhalation exposure several years ago. Treatment was received in the past under workman's comp per patient. Patient states he continues to have concern with his memory in terms of dates and location and new informational attention." (R.X.27-28) Claimant's final visit to Karas Healthcare was May 19, 2020 when he appeared in person for an examination by APRN Camp. There was no mention of his difficulties from his exposure to insecticides and no objective findings of any health issues related to that exposure. (R.X.32-33)

Claimant was next seen by Dr. Mantinderpreet Singh at White River Health Systems in Batesville, Arkansas, on July 22, 2020. He reported exposure to insecticide in a hotel on October 17, 2019 and complained that he was suffering from short-term memory loss. The review of his systems shows no abnormalities. Although he denied anxiety in the review of the symptoms, the assessment plan includes a test for memory impairment, including an MRI on his brain and a psychiatric referral for anxiety. (CL.X.#1, pages18-23) Blood was drawn and submitted to Quest Diagnostics for testing, and all of the items tested appeared to be within normal limits. (CL.X.#1, pages 24-28)

In September 2020, claimant underwent a neurophysiological evaluation performed by Clinical Neurophysiologist Dr. Amy Parrish. The records from the July visit with Dr. Singh were apparently made available to Dr. Parrish because there is a reference to "weight loss of 50 pounds post initial exposure" although there is not a direct reference to a chemical exposure in Dr. Parrish's records. Her impressions were that claimant was suffering from "mild neurocognitive disease disorder secondary to subcortical changes appears to be vascular in nature, depression and anxiety. She suggested that

claimant receive additional patient education on how to reduce his controllable risk factors for cardiovascular disease and that he undergoes psychotherapy treatment for his depression and anxiety. (CL.X.#1, pages 29-34)

Based on Dr. Parrish's recommendation, claimant was referred to Dr. Witold Czerwinski where APRN Jeri Spurlock interviewed him. Claimant stated that he had had numerous problems since his exposure to insecticides: "he noted right sided tone numbness, decreased motor skills, while reading he noted his eyes feels like they are flickering, difficulty with recalling what he was saying in the middle of conversation, decreased memory, vivid dreaming/night mares, stuttering, breathing capacity has decreased (seeing pulmonologist), difficulty with balance (new onset since exposure), blood in stool post-injury, symptoms of dysphagia (dilation in May) and decreased hearing." Other than claimant's statements, nothing in APRN Spurlock's report attributed anything to his exposure to insecticides. (CL.X.#1, pages 35-37).

Claimant then had another session with APRN Spurlock, entitled "complete evaluation/initial psychiatric evaluation." The only mention of the incident which gives rise to this claim was in the history that Mr. Mobley gave: "he reports he was exposed to insecticide while treating the hotel for bed bugs in October 2019 and has experienced memory problems and respiratory problems since that time." After the evaluation, the diagnosis was a major depressive episode, generalized anxiety disorder, and unspecified sleep-wake disorder. (CL.X.#1, pages 38-46) This was followed up with an October 8, 2020 progress note, again completed by APRN Spurlock, in which there was still no connection made between the October 17, 2019 incident and his mental condition in October 2020. (CL.X.#1 pages 49-50)

The medical records reflect another visit to Dr. Singh on December 16, 2020. The history and physical was identical to the previous record by Dr. Singh of July 21, 2020, as were the review of

symptoms. Claimant reported no significant issues in his physical well-being other than this passage which is difficult to understand: "...no difficulty with gait or walking, no involuntary movements: trembling or shaking (tremor): on the left side only, and no involuntary movements: trembling or shaking (tremor): on the right side only." I frankly don't know what Dr. Singh was recording in that section of the review of symptoms, and there is no other mention of problems with the extremities during the motor exam portion of the physical examination.

On May 13, 2021, claimant had a virtual telehealth visit with nurse practitioner Brittney Little at Jackson Pulmonary Associates. This was in follow-up for reactive airway disease. NP Little recorded "he currently reports no new problems." There was no physical examination and therefore no objective findings from this visit.

The records include what appears to be a blood test ordered by Dr. Wayne Bruffett, an orthopedic surgeon at Saint Vincent's Health Systems, on August 12, 2021 which presumably involved surgery on claimant's back for his injury at Walmart. I saw no relevance in these records to the case before me.

There is a three sentence "to whom it may concern" November 1, 2021, letter from Dr. Portis which says simply "Mr. Mobley is currently under my care for history of exposure to pesticides while at work. More likely than not, his current symptoms are related to said exposure. Please see previous documentation for more information."

The final report was from Dr. Elizabeth Eoff, following an office visit on November 5, 2021. Dr. Eoff's specialty is geriatric medicine, and her report relates what claimant told her about his memory loss stemming back to an exposure to insecticides in 2019. In her assessment, Dr. Eoff noted under the section for cognition that claimant likely has "cognitive decline referred to "Major Neurocognitive Disorder" in which there is cognitive impairment that interferes with the ability to

function in daily life without the presence of delirium.” She then opined that it could be “Mild Cognitive Impairment or MCI which is diagnosed as memory loss >1.5 SD below the normal for age and education level of the person with absence of functional impairment.” Her differential diagnosis included “Chemical exposure related” but also vascular cognitive decline, Alzheimer disease (AD) type cognitive decline, mixed AD and vascular cognitive decline. The contributing factors for cognitive decline included “chemical exposure, diabetes mellitus, hypoxemia due to –interstitial, depression/anxiety and/or B12 def.” Dr. Eoff ordered a PET scan, which did not support a finding of Alzheimer’s dementia. (CLX #2, page 1-11)

ADJUDICATION

In order to prove the occurrence of an injury caused by a specific incident or incidents identifiable by time and place of occurrence, a claimant must show that: (1) an injury occurred that arose out of and in the course of his employment; (2) the injury caused internal or external harm to the body that required medical services or resulted in disability or death; (3) the injury is established by medical evidence supported by objective findings, which are those findings which cannot come under the voluntary control of the patient; and (4) the injury was caused by a specific incident and is identifiable by time and place of occurrence. If a claimant fails to establish by a preponderance of the evidence any of the above elements, compensation must be denied. *Mikel v. Engineered Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997). The “preponderance of the evidence” standard means the evidence having greater weight or convincing force. *Barre v. Hoffman*, 2009 Ark. 373, 326 S.W.3d 415.

As claimant was the only witness called on the issue of compensability, his credibility is crucial to proving proof by a preponderance of the evidence as to these four elements. After listening to his testimony and then reviewing the transcript, I do not find he was a credible witness. To begin with, claimant’s version of how the incident took place is improbable. He testified that he broke down the

room by standing up the mattress, bagging the linen and putting on the heater. He said he walked out and didn't enter the room again. Therefore, for a bug bomb to have been placed after he left, someone else would have had to enter the room, see the room was being treated and brave the heat that was being applied to increase the temperature of the room to 135 degrees in order to set the bug bomb. Even though over two years have passed since the time claimant said this incident happened, he did not identify who the person was who supposedly placed the bug bomb after claimant had treated the room. However, during his testimony at the hearing, claimant related someone named Geraldo attended to him after he had passed out from the exposure to chemicals in the heated room. This person was not mentioned during the claimant's deposition; the hearing was the first-time respondent had been told that there may have been a witness to at least part of what claimant maintains happened to him. I found it a bit too convenient that claimant recalled this person at the hearing, but had not mentioned him during discovery or attempted to locate him as a witness to the hearing.

I also found claimant was not credible when he repeatedly argued with entries in the medical records. There are many instances where claimant said that the records did not accurately state what he told the one treating him, or it omitted what he had related to the health care provider. While mistakes can be made in record keeping, in order to accept claimant's version of events, I would have to believe it happened constantly during his course of treatment; I don't believe that is the more likely explanation.

In having the testimony of the claimant as the only evidence that an injury occurred, this matter is similar to *Johnson v. NPC Int'l, Inc.*, 2018 Ark. App. 25, 538 S.W.3d 859. The Court of Appeals concluded its review with the following:

“But there was simply no evidence of a specific injury occurring on February 27 other than Johnson's own testimony. Johnson is correct that this case ultimately boils down to credibility. As noted above, it is the Commission's duty to make determinations of credibility, to weigh the evidence, and to resolve conflicts in medical testimony and evidence.”

Even if I accepted claimant's version of how the incident occurred that led to him being exposed to overheated insecticides, he did not provide proof beyond his testimony that the exposure was the cause of his physical maladies. Several healthcare providers recorded what claimant told them, but none of them except Dr. Portis and perhaps Dr. Eoff attempted to relate what they were seeing while examining claimant to an exposure to insecticides (The reports of Dr. Portis and Dr. Eoff will be discussed below). Claimant did not present any scientific literature on the effects of pyrethrin, which was the only chemical agent in the insecticide that he identified at the hearing. He made reference in his deposition to some other chemical agents that were possibly involved, but had no proof of what substances he was exposed to. I recognize claimant was speculating about what might have been in the room where he allegedly passed out.

And finally, if I accepted that the incident happened as claimant said, and further found that the chemicals were toxic based solely on his testimony, the medical records did not provide the necessary objective findings to support his claim of an injury. In the prehearing order, the damage was alleged to have affected his “lungs, eyes, mental, skin damage due to insecticide and black mold poisoning.” Taking these items in reverse order, claimant was clear in his deposition that he was not claiming black mold was the cause of his injury (CL..X #4, page 36), and respondent was entitled to rely on that assertion in presenting its defense. There was no report from a dermatologist about damage to claimant's skin; the report from his first visit to a health care provider after he says he was exposed to chemicals did not reflect any skin damage, only that it was clammy to the touch. Those

treating claimant for mental issues again reported what claimant said, but nothing in those reports consist of an objective finding that claimant's mental condition was affected by an exposure to insecticides. Dr. Eoff listed it as part of her differential diagnosis, which is no more than a potential cause among other possibilities. Claimant's eye examination was about three weeks after he said he was exposed to insecticides, and nothing in the report from Dr. Webb-Haines made a clear attribution to the condition she was seeing to that alleged exposure.

That brings me to the claim relating to a lung injury. On November 1, 2021, Dr. Portis said in unambiguous terms: "Mr. Mobley is currently under my care for history of exposure to pesticides while at work. More likely than not, his current symptoms are related to said exposure." However, the test results and physical examination notes in Dr. Portis' January 16, 2020, report don't support an objective finding on any respiratory disease or injury, and there were no records presented of any subsequent physical examination to provide the necessary objective medical evidence to establish an injury.

Any of the three areas where I found claimant's proof lacking would alone be sufficient to deny this claim. Combined, I am satisfied that claimant did not meet his burden of proof, and as such, this claim must be denied.

ORDER

Claimant has failed to meet his burden of proving by a preponderance of the evidence that he suffered a compensable injury on or about October 18, 2019. Therefore, his claim for compensation benefits is hereby denied and dismissed.

Respondent is responsible for paying the court reporter her charges for preparation of the hearing transcript.

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IT IS SO ORDERED.

JOSEPH C. SELF
ADMINISTRATIVE LAW JUDGE