

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G105493

MARIA PINEDA, Employee	CLAIMANT
TYSON POULTRY, Employer	RESPONDENT
TYNET, Carrier/TPA	RESPONDENT

OPINION FILED APRIL 25, 2022

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Springdale, Washington County, Arkansas.

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

Respondents represented by R. SCOTT ZUERKER, Attorney, Fort Smith, Arkansas.

STATEMENT OF THE CASE

On March 23, 2022, the above captioned claim came on for hearing at Springdale, Arkansas. A pre-hearing conference was conducted on October 20, 2021 and a pre-hearing order was filed on that same date. A copy of the pre-hearing order has been marked as Commission's Exhibit #1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The employee/employer relationship existed between the parties on June 27, 2011.
3. The claimant was earning sufficient wages to entitle her to compensation at the weekly rates of \$381.00 for total disability benefits and \$285.00 for permanent partial

disability benefits.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Compensability of injury to claimant's lungs on June 27, 2011.
2. Claimant's entitlement to medical treatment.

The claimant contends she sustained a compensable lung injury and is entitled to additional medical treatment.

The respondents contend the claimant did not sustain a compensable injury as that term is defined by Act 796.

From a review of the record as a whole, to include medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witness and to observe her demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

#### FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at a pre-hearing conference conducted on October 20, 2021 and contained in a pre-hearing order filed that same date are hereby accepted as fact.

2. Claimant has met her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her lungs on June 27, 2011.

3. Respondent is liable for payment of all reasonable and necessary medical treatment provided in connection with claimant's compensable lung injury. This includes continuing medical treatment from Dr. Paul.

4. Claimant's attorney is entitled to a fee on all indemnity benefits. This includes

indemnity benefits previously paid by respondent.

### FACTUAL BACKGROUND

Claimant is a 48-year-old woman who began working for respondent in 2009. On June 27, 2011 claimant was working in packaging, packaging boxes of chicken. On that date there was a chlorine leak and claimant, along with other employees, exited the facility. Claimant testified that she felt a burning sensation in her chest and on her face. She also testified that she had difficulty breathing.

Claimant along with other employees were put on a bus and taken to Northwest Medical Center in Bentonville where she was diagnosed with chlorine gas exposure with acute interstitial asthma. Claimant was admitted to the hospital and treated with bronchodilator therapy and steroids. After a period of hospitalization, claimant was released and attempted to return to work but upon returning developed additional issues and was sent for additional medical treatment.

Since that time claimant has received treatment for breathing issues from various physicians and her treatment has primarily consisted of the use of inhalers and various medications. On March 19, 2014, claimant came under the care of Dr. Kyle Hardy, who is board certified in pulmonary and critical care. He has treated claimant primarily with medication. According to his deposition testimony, his working diagnosis is asthma or reactive airways dysfunction from chemical exposure. At the time of his deposition, Dr. Hardy indicated that he would recommend the use of a Bravo pH monitor to determine whether claimant has reflux that is causing irritated airways and he also wanted to send claimant to National Jewish Hospital for an evaluation.

Respondent originally accepted claimant's injury as compensable and paid compensation benefits which included medical treatment. Apparently at some point after the deposition of Dr. Hardy on July 22, 2020, respondent decided to terminate medical treatment and has now controverted the claim.

Following respondent's decision to terminate medical treatment, claimant began treating with Dr. Daniel Paul who is board certified in internal medicine, pulmonary disease, and critical care. His first evaluation of claimant occurred on March 30, 2021. Dr. Paul has prescribed medication in the form of Trelegy. According to his deposition testimony his working diagnosis is asthma "but she had a history of exposure to a chemical spill in 2011, so I also raise the possibility that we might be dealing with a related condition called reactive airways dysfunction syndrome."

Following respondent's decision to controvert the claim, claimant has filed this claim contending that she suffered a compensable injury to her lungs on June 27, 2011 and requesting payment of related medical treatment. Given respondent's controversion of the claim, claimant's attorney has also requested a fee on all indemnity benefits, even those previously paid by respondent.

### ADJUDICATION

Claimant contends that she suffered a compensable injury to her lungs on June 27, 2011 as the result of a chlorine leak. A compensable injury is one that (1) arises out of and in the course of employment; (2) causes internal or external harm to the body that requires medical services or resulted in disability or death; and (3) is caused by a specific incident identifiable by time and place of occurrence. A.C.A. §11-9-102(4)(A)(i).

Furthermore, because claimant is alleging a pulmonary or respiratory injury, her claim is governed by the provisions of A.C.A. §11-9-114 which states in pertinent part:

(a) A cardiovascular, coronary, pulmonary, respiratory, or cerebrovascular accident or myocardial infarction causing injury, illness, or death is a compensable injury only if, in relation to other factors contributing to the physical harm an accident is the major cause of the physical harm.

(b)(1) An injury or disease included in subsection (a) of this section shall not be deemed to be a compensable injury unless it is shown that the exertion of the work necessary to precipitate the disability or death was extraordinary and unusual in comparison to the employee's usual work in the course of the employee's regular employment or, alternatively, that some unusual and unpredicted incident occurred which is found to have been the major cause of the physical harm.

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has met her burden of proof. First, I find that claimant has met her burden of proving by a preponderance of the evidence that she suffered an injury which arose out of and in the course of her employment and that it was caused by a specific incident identifiable by time and place of occurrence. Here, there appears to be no question that claimant was present at work on June 27, 2011 when a chlorine leak occurred and she was exposed to that leak.

I also find that this chlorine leak caused internal harm to claimant's body that required medical services or resulted in disability. Claimant, along with various other employees, was taken by bus to Northwest Medical Center in Bentonville. Claimant testified that she felt a burning sensation in her chest and on her face and that she had difficulty breathing. Emergency room records from Northwest Medical Center in

Bentonville dated June 27, 2011 indicate that claimant was diagnosed as suffering from chlorine gas exposure with acute interstitial edema. Claimant was admitted to the hospital and received bronchodilator therapy and steroids. Thus, this incident clearly resulted in the need for medical treatment.

I also find that pursuant to A.C.A. §11-9-114(a) that claimant's injury was the major cause of her physical harm. While claimant testified that she believed some physician may have indicated she suffered from asthma when she delivered her child 20-plus years ago, claimant testified that she has not received any treatment for asthma since that time and there are no medical records indicating that claimant suffered from asthma or any other breathing problems prior to June 27, 2011. Accordingly, I find that claimant's exposure to the chlorine leak was the major cause of her physical harm.

I also find that pursuant to A.C.A. §11-9-114(b)(1) that an unusual and unpredicted incident occurred which is found to be the major cause of her physical harm. Certainly, a chlorine leak which results in evacuation of a plant and the busing of numerous employees to the hospital is an unusual and unpredicted incident. Furthermore, for reasons previously discussed, I find that this unusual and unpredicted incident was the major cause of claimant's physical harm.

Finally, I note that claimant has offered objective medical findings establishing an injury. The initial chest x-ray taken on June 27, 2011 shows bilateral pulmonary infiltrates. In addition, a chest x-ray taken on June 28, 2011 revealed mild atelectasis of the right mid lung. According to the testimony of Dr. Paul, this is a condition that prevents the air sacs from fully opening. Furthermore, with respect to the diagnosis of acute interstitial edema, I note that Dr. Paul testified that interstitial is the tissue between the air sacs and

the bronchial tubes and that edema means that there was fluid and swelling in the lung. These are objective findings establishing an injury on June 27, 2011.

Accordingly, for the foregoing reasons, I find that claimant has met her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her lungs as a result of a chlorine leak on June 27, 2011.

Having proven that she suffered a compensable injury, respondent is liable for payment of all reasonable and necessary medical treatment provided in connection with claimant's compensable lung injury.

Respondent contends that claimant's current symptoms are not causally related to a compensable injury on June 27, 2011. As previously noted, respondent initially accepted claimant's lung injury as compensable and paid compensation benefits including medical treatment until some point after Dr. Hardy's deposition on July 22, 2020.

As previously noted, Dr. Hardy testified at his deposition that his working diagnosis for claimant is asthma or reactive airways dysfunction from chemical exposure. Likewise, Dr. Paul's working diagnosis is also asthma with possible reactive airways dysfunction syndrome due to claimant's history that she had no lung symptoms prior to the chlorine exposure.

In support of its contention, respondent notes that Dr. Hardy performed a methacholine challenge test on April 7, 2017, and that this test was negative. According to Dr. Hardy, these tests are not 100 percent accurate but are about 95 percent accurate and the fact that it was negative would suggest that claimant does not have asthma or reactive airways dysfunction. However, Dr. Paul also ordered a methacholine challenge test and it was positive. In fact, according to Dr. Paul, the claimant's test was highly

positive.

With respect to both Dr. Hardy and Dr. Paul, there were numerous questions regarding various other factors such as acid reflux, vocal cord dysfunction, allergic rhinitis, bronchitis, and whether those conditions could have led to a positive methacholine challenge test or be the cause of claimant's continued symptoms. However, neither Dr. Hardy nor Dr. Paul have attributed claimant's problems to any of those conditions; instead, they have diagnosed claimant as suffering from asthma or reactive airways dysfunction syndrome as a result of a chemical exposure.

In short, there is insufficient credible evidence indicating that claimant's current pulmonary problems are the result of any diagnosis other than asthma or reactive airways dysfunction syndrome. There is no indication that claimant suffered from any of these conditions prior to the incident on June 27, 2011. While claimant did testify that some doctor may have mentioned that she had asthma at the time she gave birth to her daughter, this was more than 20 years ago and there is no indication that claimant received any medical treatment or had any breathing issues prior to June 27, 2011. I find based upon the evidence presented that claimant has met her burden of proving by a preponderance of the evidence that she is entitled to continued medical treatment for her compensable lung injury. This treatment is to be provided by Dr. Daniel Paul who has been treating claimant since March 30, 2021.

In reaching this decision, I do note Dr. Hardy testified that he could not point to any objective evidence proving that claimant has any condition (asthma or reactive airways dysfunction) as a result of her chemical exposure. However, a claimant is not required to establish a causal connection between a work-related incident and an injury by either



expert medical opinion or objective medical evidence. See, *Wal-Mart Stores, Inc v. VanWagner*, 337 Ark. 443, 990 S.W 2d 522 (1999). Arkansas Courts have recognized that a causal relationship may be established between an employment-related incident and a subsequent physical injury based on evidence that the injury manifested itself within a reasonable period of time following the incident so that the injury is logically attributable to the incident, where there is no other reasonable explanation for the injury. *Hall v. Pittman Construction Co.*, 234 Ark. 104, 357 S.W. 2d 263 (1962); *Harris Cattle Company v. Parker*, 256 Ark. 166, 506 S.W. 2d 118 (1974). Here, there is insufficient credible evidence that claimant was suffering from any breathing issues prior to her exposure to chlorine on June 27, 2011. A physician's mention of possible asthma was more than 20 years ago and more than 10 years before June 2011. There are no medical records indicating that claimant was receiving any medical treatment for breathing issues before June 2011. Immediately after this incident claimant began having breathing issues which have not resolved. She has established an injury by objective evidence in the form of bilateral pulmonary infiltrates on her initial x-ray and mild atelectasis in subsequent x-ray. Accordingly, I find that she has established a causal connection between her current symptoms and the compensable injury.

The final issue for consideration involves claimant's attorney's request for an attorney fee. While respondent initially accepted this injury as compensable and paid some compensation benefits including medical treatment and some temporary total disability benefits, respondent subsequently controverted the entire claim. Although respondent did not seek reimbursement for any benefits previously paid prior to controversion, that is not dispositive. See *Cleek v. Great Southern Metals*, 335 Ark. 342,

981 S.W. 2d 529 (1998). In addition, the Commission in *Lula L. Garrett v. Superior Marketing Service*, Full Commission Opinion filed November 5, 2001 (E903251), found that an attorney fee may be due on benefits voluntarily paid before a claim was controverted. Based on these decisions, I find that claimant's attorney is entitled to an attorney fee on any indemnity benefits which are paid in the future and that claimant's attorney is entitled to a fee on any temporary total disability benefits voluntarily paid to the claimant before her claim for a work-related injury was controverted in its entirety.

#### AWARD

Claimant has met her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her lungs on June 27, 2011. Respondent is liable for payment of all reasonable and necessary medical treatment provided in connection with claimant's compensable injury. This includes continuing medical treatment from Dr. Paul. In addition, respondent has controverted claimant's entitlement to any future indemnity benefits and in addition is liable for payment of an attorney fee on all indemnity benefits previously paid. This fee is to be paid one-half by claimant and one-half by respondent pursuant to A.C.A. §11-9-715 and *Death and Permanent Total Disability Trust Fund v. Brewer*, 76 Ark. App. 348, 65 S.W. 3d 463 (2002).

The respondent is liable for payment of the court reporter's charges for preparation of the hearing transcript in the amount of \$598.55.

All sums herein accrued are payable in a lump sum and without discount.

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IT IS SO ORDERED.

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GREGORY K. STEWART  
ADMINISTRATIVE LAW JUDGE