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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

PARADISE VALLEY UNIFIED SCHOOL DISTRICT, *Petitioner Employer,*

VALLEY SCHOOLS WORKER'S COMPENSATION POOL¹, *Petitioner
Carrier,*

v.

INDUSTRIAL COMMISSION OF ARIZONA, *Respondent,*

JEFFREY HOFMANN, *Respondent Employee.*

No. 1 CA-IC 16-0020
FILED 3-28-2017

Special Action - Industrial Commission

ICA Claim No. 20143-0808504

Carrier Claim No. 31298

The Honorable Jonathan Hauer, Administrative Law Judge

AWARD AFFIRMED

¹ On the court's own motion, it is ordered amending the caption in this appeal as reflected in this decision. The above referenced caption shall be used on all further documents filed in this appeal.

COUNSEL

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MEMORANDUM DECISION

Judge Kent E. Cattani delivered the decision of the Court, in which Presiding Judge Peter B. Swann and Judge Donn Kessler joined.

C A T T A N I, Judge:

¶1 This is a special action review of an Industrial Commission of Arizona award and decision upon review for a compensable injury. Paradise Valley Unified School District (“PVUSD”) argues that the administrative law judge (“ALJ”) erred by finding claimant Jeffrey Hofmann’s bladder cancer was caused by work-related mercury exposure. For reasons that follow, we affirm.

FACTS AND PROCEDURAL BACKGROUND

¶2 Hofmann worked for PVUSD as a distribution center technician from September 2008 through March 2013. His duties initially included delivering mail, furniture, and supplies. In January 2010, Hofmann also became the primary operator of PVUSD’s newly purchased “bulb-eater machine” – a system for crushing fluorescent bulbs used to destroy and dispose of all burned-out light bulbs in the district.

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¶3 The bulb-eater machine comprised a crushing apparatus on top of a fifty-gallon steel drum. Bulbs inserted through a tube in the top of the machine would pass through a spinner assembly of metal chains to crush the bulbs, and a vacuum sucked the resulting debris down into the steel drum. Full drums were disposed of as hazardous waste due to mercury content from the crushed bulbs.

¶4 Hofmann testified that he operated the bulb-eater machine inside a closed warehouse. He estimated that he crushed approximately 20,000 fluorescent bulbs over the course of his employment, filling between 23 and 25 fifty-gallon steel drums. Hofmann also changed out the full drums for disposal, and he changed filters in accordance with the manufacturer's recommendations, replacing the first stage bag filter at least twice per drum and the second stage HEPA filter and spinner assembly every ten drums.

¶5 Hofmann testified that, after operating the bulb-eater machine for an hour, he would be covered with a film of dust over his arms, hat, shoes, and clothing. He was exposed to additional dust when performing required maintenance, when bulbs shattered before being sucked completely into the machine, and when he had to remove the crushing apparatus to correct a jam or to change a full drum.

¶6 Although Hofmann wore goggles and gloves while operating the bulb-eater machine and used a paper mask when changing filters, an expert witness testified that a paper mask did not provide the level of filtration necessary to protect against mercury exposure. The manufacturer's safety materials did not recommend using a mask, but did recommend that employees wash their hands and face after using the machine and that employees minimize time exposed to the dust inside the machine (as when changing filters or drums) to less than 5 minutes to avoid exposure to mercury in excess of OSHA standards.

¶7 In January 2013, Hofmann began to notice symptoms of what was diagnosed as bladder cancer in early 2014. Believing that the dust from the bulb-eater machine contained mercury and that it had caused his bladder cancer, Hofmann filed a workers' compensation claim for a gradual injury. When the carrier denied his claim for benefits, Hofmann requested a hearing, and the ALJ heard testimony from Hofmann, his supervisor, and two physicians.

¶8 The ALJ found that Hofmann's bladder cancer had been caused by workplace mercury exposure and entered an award for a

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compensable claim. PVUSD timely requested administrative review, and the ALJ summarily affirmed the award. PVUSD then brought this statutory special action. We have jurisdiction under Arizona Revised Statutes (“A.R.S.”) §§ 12-120.21(A)(2) and 23-951(A), and Arizona Rule of Procedure for Special Actions 10.²

DISCUSSION

¶9 On review of a workers’ compensation award, we defer to the ALJ’s factual findings, but review questions of law de novo. *Young v. Indus. Comm’n*, 204 Ariz. 267, 270, ¶ 14 (App. 2003). We will affirm unless, considering the evidence in the light most favorable to sustaining the award, there is no reasonable basis for the ALJ’s decision. *Lovitch v. Indus. Comm’n*, 202 Ariz. 102, 105, ¶ 16 (App. 2002).

¶10 PVUSD argues the ALJ erred by finding that Hofmann had established legal and medical causation, essential elements of a compensable claim. *See DeSchaaf v. Indus. Comm’n*, 141 Ariz. 318, 320 (App. 1984). Legal causation is established by showing that a claimant’s injury arose out of his employment. *See id.* This requires that (1) the employee was acting in the course of employment, (2) the injury resulted from an incident that occurred in the course of employment, and (3) the injury was caused or contributed to by a necessary risk or danger inherent in the work. *Grammatico v. Indus. Comm’n*, 211 Ariz. 67, 71, ¶ 19 (2005). Medical causation, in contrast, addresses whether the industrial incident caused the claimant’s injury, and typically requires expert medical testimony to establish the causal link. *Allen v. Indus. Comm’n*, 124 Ariz. 173, 175 (App. 1979).

¶11 Here, the evidence supports the conclusion that Hofmann’s mercury exposure occurred in the course of his employment, so the ALJ did not err by determining that Hofmann established legal causation. Hofmann presented evidence that he operated the bulb-eater machine as part of his job duties, that he did so inside a closed warehouse, and that he crushed 20,000 fluorescent tubes over a three-year period.

¶12 Hofmann also presented evidence that fluorescent bulbs contain between 5 and 50 milligrams of mercury, which is released into the air when a bulb breaks. He submitted an instruction/operation manual for the bulb-eater machine, which detailed the following concerns:

² Absent material revisions after the relevant date, we cite a statute’s current version.

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Mercury Emissions

The disposal of mercury-containing fluorescent lamps and the potential for emissions is of concern because mercury is a highly toxic metal that bioaccumulates through the food chain. Mercury also has a low vapor pressure . . . and readily evaporates to form mercury vapor at room temperature. . . . The volatilization is especially significant with respect to human health, as it results in ambient mercury vapor that can be absorbed into the human body through various pathways. These include direct inhalation, ingestion through surface contamination, and absorption through the skin. . . .

Systemic Effects

. . . Either acute or chronic exposure may produce permanent changes to affected organs and organ systems. Excessive exposure to various forms of mercury has been shown to adversely affect the human central nervous system, kidneys, and reproductive system.

Crushing Hazards

. . . It is also extremely important that the manual be followed closely. Failure to operate the machine properly could lead to dangerous mercury vapor exposure. While boxing intact lamps, be careful to avoid breaking the lamps. When intact lamps break, unfiltered vapors are released.

He also presented photographs of fluorescent bulbs stored at the PVUSD warehouse awaiting destruction, an initial EPA study from May 2003 investigating drum-top crushers and their efficacy in recovering mercury vapor, and a November 2007 warning from the Minnesota Department of Health regarding release of mercury vapor during use of drum-top crushers.

¶13 Although PVUSD presented contrary evidence regarding the bulb-eater machine's functioning and filtration efficacy, we defer to the ALJ's resolution of evidentiary conflicts. *Henderson-Jones v. Indus. Comm'n*, 233 Ariz. 188, 191-92, ¶ 9 (App. 2013). Based on the testimonial and documentary evidence presented, *see Perry v. Indus. Comm'n*, 112 Ariz. 397, 398 (1975), the record supports the ALJ's finding that Hofmann was exposed to mercury vapor from broken and exploding fluorescent tubes—

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and in fact was covered with dust containing mercury – while performing his work, thus establishing legal causation.

¶14 Additionally, the ALJ did not err by determining that Hofmann established medical causation, because the record supports the conclusion that Hofmann’s workplace mercury exposure caused his bladder cancer. Medical causation, unless apparent to a lay person, must be shown by expert testimony “to a reasonable degree of medical probability.” *Hackworth v. Indus. Comm’n*, 229 Ariz. 339, 343, ¶ 9 (App. 2012) (citation omitted). Positive knowledge of causation is not always possible, however, and some level of uncertainty does not preclude a finding that an expert medical opinion is legally sufficient. *See Harbor Ins. Co. v. Indus. Comm’n*, 25 Ariz. App. 610, 612 (App. 1976). A medical opinion must rely on findings of medical fact, which may be based on a claimant’s history, medical records, diagnostic tests, and examinations. *Royal Globe Ins. Co. v. Indus. Comm’n*, 20 Ariz. App. 432, 434 (App. 1973); *see also Spector v. Spector*, 17 Ariz. App. 221, 226 (App. 1972). In the case of conflicting expert medical testimony, we defer to the ALJ’s resolution of the conflict unless “wholly unreasonable.” *Stainless Specialty Mfg. Co. v. Indus. Comm’n*, 144 Ariz. 12, 19 (1985).

¶15 Two physicians testified regarding the provenance of Hofmann’s bladder cancer: Farshid Sadeghi-Najafabadi, M.D., a board-certified urologist trained in oncology, and Jason Salganick, M.D., an oncologist who testified on PVUSD’s behalf. Dr. Sadeghi was one of Hofmann’s treating physicians. After Hofmann consulted Dr. Sadeghi’s partner regarding blood in his urine, a CT scan revealed a tumor in his bladder and a resection of the tumor revealed cancer. Because Hofmann’s cancer was particularly aggressive, Dr. Sadeghi removed Hofmann’s bladder.

¶16 Regarding the cause of Hofmann’s cancer, Dr. Sadeghi noted that Hofmann was “fairly young” to have bladder cancer and that he lacked any of the usual risk factors, such as smoking, second-hand smoke, or a genetic predisposition. Dr. Sadeghi stated that this left only two options: that Hofmann developed sporadic cancer or that he had a different kind of environmental exposure. He opined that it was more likely than not that Hofmann’s bladder cancer was causally related to his exposure to mercury at work:

[I]n this case, he definitely has environmental exposure to material that our government locally, statewide regulates in our water, in our food supply to avoid exposure, and the

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reason for that is that they're toxic, and one of the things they can do is cause cancer, and one of the ways our body gets rid of these chemicals is through the urinary tract and through the bladder.

¶17 Based on Hofmann's description of the bulb-crushing process, Dr. Sadeghi further noted that Hofmann would have inhaled dust containing mercury and lead from the shattered fluorescent tubes. The doctor opined that this was similar to exposure to cigarette smoke, the chemicals from which could reach the bladder:

[C]igarette smoke goes into your lungs, and then it's filtered into your blood, and any chemical that's in your blood . . . gets metabolized, broken down by your liver, but eventually makes its way to the kidneys and gets drained in the urine and ends up in the bladder. So if you were inhaling . . . mercury . . . , from a medical standpoint it makes perfect sense that it could potentially hurt his bladder because that's where it's going to end up.

¶18 Moreover, PVUSD's expert, Dr. Salganick, acknowledged that his literature search had revealed a study that reported a "possible relationship with high levels of mercury exposure and bladder cancer." Although Dr. Salganick disagreed with Dr. Sadeghi's ultimate opinion on causation, the ALJ was free to consider Dr. Salganick's literature search as further support for Dr. Sadeghi's causation opinion. *See Fry's Food Stores v. Indus. Comm'n*, 161 Ariz. 119, 123 (1989) ("A factfinder is free to put together parts of expert testimony in a reasonable manner.").

¶19 Accordingly, Dr. Sadeghi's opinion that the absence of other potential causes made Hofmann's workplace mercury exposure "more than likely" the cause of his bladder cancer, expressed to a reasonable degree of medical probability, was legally sufficient to support medical causation. Although Dr. Salganick offered an opinion to the contrary, resolving the conflict in favor of Dr. Sadeghi's opinion was not unreasonable, *see Stainless Specialty*, 144 Ariz. at 19, and the ALJ thus did not err by finding the requisite causal link between Hofmann's work activities and his bladder cancer.

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CONCLUSION

¶20
claim.

Accordingly, we affirm the ALJ's award of a compensable



AMY M. WOOD • Clerk of the Court
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