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ARKANSAS COURT OF APPEALS

DIVISION III
No. CA08-1003

	Opinion Delivered March 11, 2009
SUPERIOR INDUSTRIES CROCKETT ADJUSTMENT APPELLANTS	APPEAL FROM THE ARKANSAS WORKERS' COMPENSATION COMMISSION
V.	[NO. F610226]
JOSE SALGUERO APPELLEE	AFFIRMED

WAYMOND M. BROWN, Judge

Appellants Superior Industries (Superior) and Crockett Adjustment appeal from the May 2, 2008 decision of the Arkansas Workers' Compensation Commission (Commission) finding that appellee Jose Salguero suffered a compensable injury due to chemical exposure in January and August of 2005. On appeal, appellants argue that the evidence was insufficient to support the Commission's decision. We affirm.

Appellee worked for Superior in the chrome plant from 1999 to 2006. Appellee began to complain of shortness of breath, burning throat, and chest pain following an incident in January 2005 when a fan blew fumes on him. Appellee complained again in August 2005 when a pipe leaked and he was exposed to fumes for nearly three weeks. Appellants controverted appellee's claim, arguing that even if appellee was exposed to something in the

alleged incidents, it was not harmful. A hearing was held before the administrative law judge (ALJ) on September 18, 2007.

Daniel Huaracho testified that he worked for Superior from August 1999 to August 2006. According to Huaracho, he worked with appellee on the copper and nickel line and acted as an interpreter for appellee. Huaracho stated that appellee did not speak English and often asked him to interpret his complaints to Mr. Jeff Linson, appellee's supervisor. According to Huaracho, appellee and three other persons went to Human Resources to complain when a pipe containing hydrochloric acid popped off near appellee's work area. Huaracho stated that he interpreted at least ten complaints for appellee to Linson about chest pain, itching, and pain when appellee swallowed. Following one interpretation, Linson gave appellee a piece of paper with a number to the Diagnostic Clinic. Huaracho called the number for appellee and was told that appellee needed to make arrangements for payment because Superior was not paying for the visit.

On cross-examination, Huaracho testified that Superior did not have a ventilation and scrubber system everywhere it was needed. He stated that the first time he interpreted for appellee was when the pipe popped off. On re-direct, Huaracho stated that he worked in the wheel business eighteen or nineteen years. He testified that he used to work in the solution maintenance department and that those workers wore protective gear. Huaracho stated that the chemicals had labels on them in English but that appellee did not read English. He further testified that he did not believe many of the workers could read the warnings.

Pedro Castro testified that he was currently unemployed but had worked for Superior for seven or eight years. Castro stated that he worked with appellee and was present at the time of the fan incident. According to Castro, they first started smelling fumes and he began to have trouble swallowing. He testified that he got better after this incident but that appellee got worse. Castro stated that the incident with the fan lasted about three days. Castro testified that Pablo Ayala and Abdilio Mendoza were also present at the time. Castro stated that they all went to report the incident to HR and talked to Edwin Diaz. Ms. Linda, the HR manager, was not there when they first went but they were able to see her later. Ms. Linda told them that she would e-mail the person in charge of "these types of things." Castro said that he went to HR three times about fumes. Castro also testified that he interpreted appellee's complaints to Linson a few times.

On cross, Castro testified that he worked next to appellee for one or two years. He stated that he did not know what type of fumes they were breathing because Superior did not inform them about the chemicals they were working with. Castro also said that he did not know if there was a leak because Superior did not let them know what was going on. He stated that he "imagine[d] that the people in charge of the chemicals were doing something wrong."

Appellee testified that he currently worked for Danaher. Appellee stated that he worked for Superior for over five years until the plant shut down in August 2006. He testified that he first started experiencing problems in January 2005 when fumes were blown

on him. Appellee stated that the fumes caused his throat and nose to burn. He testified that he and three other persons went to report the incident to Linson; but he could not remember who the other persons were. Appellee stated that they were given cardboard masks. Appellee also said that they had paper masks for dust. Appellee testified that the man working with the chemicals in January 2005 had on a rubber-type jacket and mask. Appellee testified that he first went to Dr. Garland Thorn, the plant doctor, about two weeks after the fan incident. Appellee stated that he saw Dr. Thorn three times before he was sent somewhere else. Appellee testified that although he did not have an appointment, he went to the Diagnostic Clinic. He stated that in August 2005 he was working in the pre-plate department when he smelled something that burned his throat, nose, and chest when he breathed. Appellee, Pedro, and Pablo went to report it to HR. Appellee testified that he believed the smell and fumes were caused by chemicals but that he did not know what chemicals. He stated that they were told about the busted pipe because yellow water was on the floor. Appellee testified that it took a long time for the spill to get cleaned up and when the people did come to clean it up, they were wearing protective clothing. Appellee stated that he and other workers in the area were not wearing protective equipment. Appellee stated that he began to use Huaracho to interpret for him following the August exposure when he started feeling worse. He stated that Huaracho interpreted for him many times. Appellee testified that following the exposure in January, there were at least four occasions when someone left the line and took him to the doctor. He stated that he went to the Diagnostic

Clinic because someone in HR told him he had to have an endoscopy. Appellee said that no ulcers were found. Appellee testified that he did not know what kind of chemicals he breathed and that he was unaware how any chemical names got on his doctor's report. He testified that his condition continued to get worse and he was told by HR that he needed to have someone look at his lungs. Appellee stated that he continued to obtain medical attention at his own expense. Appellee testified that he had gone to UAMS and had tests performed. He stated that he had a follow-up appointment scheduled for November 14, 2007. Appellee testified that he did not have any problems before January 2005 and that they got worse after August 2005. Appellee stated that he continued to work for Superior until the chrome department closed. Appellee testified that he only missed work for doctors' appointments. He stated that even though he felt bad he had to work in order to support his family and pay for the medical expenses he had incurred.

On cross, appellee stated that he did not seek medical attention for his throat or lungs before he saw Dr. Thorn. Appellee stated that he saw Dr. Merle Baker on October 11, 2005, for bronchitis. Appellee testified that at the time of the January 2005 incident, he was unloading chrome rims and a fan blew vapors in his direction. He stated that he reported the incident to Linson. He said that he did not remember the names of the persons who went with him to report the incident but that Castro was not one of them. Appellee testified that the other incident took place in August 2005. Appellee stated that yellow water was on the floor and that it smelled bad. He stated that the spill burned his nose and throat and that he

reported it to Linson and HR. Appellee said that he discussed his breathing problems twice with Larry Massey following the August 2005 incident. Appellee testified that he left the plant on one occasion because he was throwing up blood and Massey told him that he could not do anything for him. Appellee stated that he was told to go home or to the hospital but that Superior could not pay for the expenses. Appellee testified that he presented to Dr. Thorn and told him that he was vomiting blood and explained everything else that was wrong with him. According to appellee, Dr. Thorn did not tell him anything to do differently at work. Appellee stated that Massey told him to wear a cardboard mask which he wore until he moved to another department.

Abdilio Mendoza testified that he was currently employed at Black Auto. Mendoza stated that he previously worked for Superior for about three years and that during this time, he worked with appellee. Mendoza said that he was present when chemicals were blown from the fan toward appellee. He stated that he went with Daniel, Pedro, and Ayala to report the incident to Linson. Mendoza testified that there was another incident in 2005 concerning a hose. Mendoza stated that he did not know what kind of chemicals were involved. He testified that he told Linson about this incident and that it took some time for them to fix the problem. Mendoza stated that appellee started coughing and said that he needed to see a doctor. Mendoza said that he told Linson about appellee's request and that appellee was sent to a doctor. Mendoza testified that he once took appellee to a doctor from the plant. He

stated that he did not know if appellee got better or worse because he moved to another department.

Jeff Linson testified that he worked for Superior in solution maintenance. Linson stated that he had worked for Superior for ten years. He said that he was plating supervisor from January 2005 to October 2005; he was appellee's supervisor during this time. Linson testified that chemicals were used in the chrome plant. He stated that there were tanks of chemicals in the plant but that one would have to go up to the catwalk in order to get to the tanks. Linson testified that there was a filtration system in the plant. He stated that there were additional storage tanks used to store chemicals and to make additions to the tanks on the production line. He testified that additions were made with barrels up on the catwalk or by opening a valve and flowing the solution from the storage tanks. Linson stated that if an injury occurred, employees were to first report it to their immediate supervisor. An incident report would be followed by a drug test; it would then be up to the employee if he wanted to see a doctor. If the employee wanted to see a doctor, it was set up with Massey. Linson stated that he typically filled out a workman's compensation form with the incident report. According to Linson, appellee first reported problems with his throat and chest on October 13, 2005. Linson stated that Pedro and Ayala also complained. Linson testified that he investigated when he got the complaint. Linson said that he went to the area and saw that one of the one-inch PVE lines had a small leak and there was deoxidizer solution dripping on the floor. Linson testified that the solution contained nitric acid, phosphoric acid, and

aluma HG. He stated that a couple of gallons had leaked out and that he did not smell anything. Linson testified that he notified solution maintenance and their supervisor and that the leak was fixed a few days after it was reported. Linson stated that appellee told him about the incident with the fan when he complained about the smell from the leak. Linson testified that he had never heard of the January incident prior to October. He stated that no one else had ever complained before about fumes or vapors in the plant. Linson said that the incident with the fan would have occurred when appellee was working on the nickel line and that the only chemicals used in that area were carbon and filter aid when the filters were changed. He testified that the chemicals in that area were kept in bags and stored above on a catwalk; that the filters were kept in barrels on the ground; and that he did not believe the powders were kept on the ground. Linson stated that if the powders were blown by the fan that it would only blow particles, not vapors or fumes. He stated that the powder substance did not have an odor. Linson testified that he offered appellee medical treatment in October when appellee reported the incident to him. Appellee was seen by the company doctor and Massey told Linson that appellee was supposed to wear a dust mask. Linson testified that appellee was given the masks but only wore the mask the first day and part of the second day. Linson stated that when appellee was asked why he did not have the mask on, he replied that he did not like to wear it. Linson stated that he never saw appellee wear the mask again.

On cross, Linson stated that he knew the symptoms listed on the Material Safety Data Sheet (MSDS) associated with the inhalation of hydrochloric and muriatic acid, which

included irritation, burning, coughing, choking, tissue ulceration, and bronchitis. Linson testified that they did not take any actions listed on the Data Sheet when the line leak was reported. He stated that the hydrochloric acid and muriatic acid were a faint yellow color. Linson testified that they also used a cyanide product. Linson stated that he had Abdilio take appellee to the doctor and that it was also possible that he had someone from HR to take appellee to the doctor. Linson acknowledged that the information on the chemicals stated that if puddles remained, they could become toxic. He stated that he reported the presence of the puddle but that it was not his duty to clean it up. Linson insisted that hydrochloric acid and muriatic acid were not in that area. He also stated the puddle was about twenty-five feet from the workers. Linson stated that he reported the leak to Massey and that the liquid was white not yellow. He further stated that he was not sure appellee and the others saw the spill because it was located behind the tanks and plumbing. Linson testified that the men complained of an odor, not a spill.

On re-direct Linson stated that the incidents appellee complained of did not involve hydrochloric or muriatic acid. He testified that he did not smell anything from the leak and that appellee was not in the area where the leak occurred. He also stated that the barrels with the warnings were kept in an area away from appellee's work area. Linson testified that hydrochloric and muriatic acid were not used in the areas of the plant where the particles and spill were. On re-cross, he stated that he was not aware that appellee and other workers were unable to read the exposure warnings on the barrels.

Lynn Pate testified that he was currently the laboratory and plating manager at Superior. He stated that he had worked for Superior for seven years. Pate said that he was an environmental engineer from 2000 to 2002 and worked in environmental services at the company. He stated that he had been in the environmental science field for fourteen years and has a BS in chemistry. He testified that he was familiar with the chemicals used at the chrome plating plant at Superior. Pate stated that he barely knew appellee and that he did not know specific information about appellee's claim. Pate testified that the chemical used in the area where the spill occurred was a deoxidizer, a combination of two acids and a chemical additive manufactured by their plating chemical supplier. Pate stated that the specific chemicals were nitric acid, phosphoric acid, glycolic acid, and a fluroboric salt. He said that in a contact situation the solution would cause a chemical burn. He also said that if it was aerosolized or if someone was around the tank where the solution was in contact with metal, the person could be exposed to a vapor or fume. Pate testified that if the solution did not come into contact with metal first, there would be no vapor situation. Pate also stated that if a person was in the area where there were filters with fans blowing he/she would only inhale dust. According to Pate, the filters were carbon or charcoal and cellulose and not vaporous material. Pate testified that Superior had an air filtration system in which fumes and vapors emitted from the tanks were pulled into a collection system and through a big fan. Pate stated that before reaching the fan, the air would pass through a scrubber and the

chemicals would be scrubbed out of the air. Pate said that the filtration system was over the cleaners and acids and some were on the copper line and nickel line.

On cross, Pate stated that he was familiar with the MSDS and that if the chemicals listed on the sheet were sniffed, they would be dangerous. He also acknowledged that some of the chemicals were yellow. On re-direct, Pate stated that it was his job to make sure that the chemicals were in the right tanks. He testified that in the area of the leak, there was only the deoxidizer. On re-cross, he testified that nitric acid, phosphoric acid, aluminum G, and alkaline 77 were the chemicals used in appellee's work area. He stated that he did not provide appellee's doctor with information concerning the possible chemicals appellee was exposed to; however, Pate stated that if a doctor called, he would tell the doctor what chemicals the workers might be exposed to. Pate also said that HR was authorized to provide a doctor with chemical information. He testified that they were required to provide the doctors with the MSDS sheet.

Larry Massey testified that he was currently the safety supervisor at Superior. He stated that he had been at Superior for over seventeen years. Massey said that his duties included handling workers' compensation issues, doctor's appointments, follow-ups, new equipment, OSHA compliance, and things of that nature. He testified that Superior had air samples taken in the chrome plant in 2005. According to Massey, pumps were placed on different employees working in the area for eight hours. Massey stated that samples were taken around the chemical tanks as well as on the individuals working on the catwalk.

Massey testified that at the end of the eight-hour period, the samples were sent to the industrial hygienist where they were to be sent to a lab for analysis. Massey stated that Superior did both personnel and area monitoring. According to Massey, pumps were placed on employees working in the same areas appellee worked. Massey stated that they had never gotten a report indicating they were not in compliance with the law. Massey testified that he got a report appellee was having breathing problems late in 2005. He stated that he signed the first report on October 14, 2005. Massey testified that when he learned of appellee's complaint about the leak, he went to the area and discovered that a pipe from one of the tanks for the deoxidizers was leaking. He stated that he did not smell anything and that he contacted solution maintenance to clean it up. Massey testified that appellee asked to see a doctor and saw Dr. Thorn two or three times. Massey stated that he thought appellee was sent to a specialist to have tests run on his throat and lungs. He said that appellee was supposed to wear a dust mask after seeing Dr. Thorn but that appellee only wore it part of the time. Massey stated that appellee told him that he was uncomfortable in the mask. Massey further stated that he never received a report that a fan blew vapors or particles toward appellee in January 2005.

On cross, Massey stated that he did not have a report concerning the January incident. When asked about the individuals equipped with the air pumps, Massey stated that he did not believe that a pump was placed on appellee. On re-direct, he stated that the air samples were taken annually and that he did not know if it was taken in either January or October 2005.

On rebuttal, appellee testified that the filters were in one place, the drums were on the floor, and the fan was in front of the drums. Appellee stated that solution was poured into the tank through a long tube. According to appellee, when the chemicals were emptied, fumes would come up. Appellee stated that he did not know if the fumes came up before the filters had filtered anything. Massey testified on rebuttal that the drums were located approximately twenty-five to thirty feet away from appellee's work area. Massey stated that the chemicals were pumped into the tank through a drum pump. According to Massey, the chemicals were not being opened up and dumped.

Medical records were also introduced at the hearing. The October 19, 2005 progress note from Dr. Thorn indicated that appellee had complaints of overall soreness and burning in his throat. Appellee returned to Dr. Thorn on October 24, 2005, complaining of itching in his throat. Appellee had an EGD performed on November 3, 2005. The EGD revealed erythema in the glottis and crico-pharyngeus but was otherwise normal in respect to the GI tract. Dr. Thorn's November 14, 2005 note indicated that appellee was complaining of chronic cough and chest pain. Dr. Thorn referred appellee to Dr. Michael Eckles. Dr. Eckles saw appellee on December 6, 2005. The note from that date indicates that appellee told Dr. Eckles that he first began to have difficulty breathing in January 2005 when he was exposed to hydrochloric muriatic acid for a minute after a fan blew the chemicals in his direction. Appellee stated that he started having burning and itching and experienced shortness of breath, but eventually seemed to recover. Appellee also reported to Dr. Eckles that he

worked near open vats of a chemical mixture for three weeks and began to have significant pain with breathing and shortness of breath. At the time of the visit, appellee complained of shortness of breath, chest pain, dry cough, and morning phlegm resulting in approximately a teaspoon of yellow sputum. Appellee was unable to complete a pulmonary function test due to coughing and chest pain. Appellee was diagnosed with occupational exposure to fumes likely causing mucosal irritation. Dr. Eckles noted that it was unusual for appellee to have the current degree of pain and inflammation so far out from the exposure period. Dr. Eckles indicated that he would initially treat appellee with a tapering dose of Prednisone and if he was still having significant pain after two weeks, an airway survey would be considered. A CT scan of appellee's chest on December 14, 2005, revealed a solitary pulmonary nodule in the middle lobe measuring "2.0 x 3.5" millimeters. Dr. Murray Harris recommended that appellee' s chest be looked at again in six to twelve months. Appellee had a bronchoscopy on December 16, 2005. Appellee was diagnosed with normal airways except for small venous ruptures submucosally with the left being greater than the right. Dr. Eckles's note for January 3, 2007, indicated that appellee's condition was a direct result from him breathing fumes at work. He opined that appellee should find another job because continued exposure to the fumes would worsen appellee's condition. Appellee was seen at UAMS on July 24, 2007. Dr. Mohammed Al-Hamed opined that appellee suffered from reactive airways disease syndrome (RADS) secondary to his chemical exposure. On July 26, 2007, Dr. Larry Johnson wrote a letter concurring with Dr. Al-Hamed that appellee had RADS.

In its October 25, 2007 opinion, the ALJ found that appellee suffered a compensable injury in January 2005 and August 2005 and ordered appellant to pay all related medical expenses. In pertinent part, the ALJ stated:

> The less biased testimony in this matter clearly indicates that the claimant as well as other employees worked in an area where chemicals were being used and at times additives were added to the tanks containing the chemicals in their work area. It is not questioned that the respondent at their chrome plant used numerous chemicals which included muriatic acid, phosphoric acid, alum G, and alkaline 77. The respondent's chemist testified that the chemical being used by the respondent at the time the plant was closed in August 2006 consisted in part of nitric acid, phosphoric acid, glycolic acid, and fluroboric salt which can be harmful if it comes in contact with a person's skin or if it becomes airborne and inhaled. Dr. Eckles in his report dated December 6, 2005, sets forth that in January 2005 the claimant reports that he was exposed to hydrochloric muriatic acid and that again in August 2005 the claimant was exposed for a three week period to muriatic acid, phosphoric acid, alum G, and alkaline 77. It is noted that the claimant does not speak English nor does he read English and has testified that he did not know what chemicals he worked around. Mr. Pate has testified that he has the authority as does the HR department to give out the chemicals used in their departments when asked. The claimant has demonstrated objective medical findings of injury based on the EGD performed on November 3, 2005, which indicated that he had erythema in the glotis [sic] and crico-pharyngeus. In Dr. Eckles' office notes dated December 6, 2005, he notes that after review of claimant's EGD, examination of the claimant, and the claimant's history he assesses the claimant with having occupational exposure to fumes likely causing mucosal irritation. When the claimant was seen at the University of Arkansas Medical School in July 2007 Dr. Al-Hamed writes that the claimant has reactive airways disease syndrome secondary to his chemical exposure. I find, therefore, that the respondents should pay for all reasonable and necessary medical care for this claimant's compensable chemical exposure injuries.

The decision was appealed to the Commission. The Commission wrote an opinion on May 2, 2008, affirming and adopting the decision of the ALJ. This appeal followed.

When reviewing decisions from the Workers' Compensation Commission, we view the evidence and all reasonable inferences deducible therefrom in the light most favorable

to the Commission's decision and affirm if that decision is supported by substantial evidence. *Smith v. City of Ft. Smith*, 84 Ark. App. 430, 143 S.W.3d 593 (2004). Substantial evidence is evidence that a reasonable mind might accept as adequate to support a conclusion. *Williams v. Prostaff Temps*., 336 Ark. 510, 988 S.W.2d 1 (1999). The issue is not whether we might have reached a different result from the Commission; if reasonable minds could reach the result found by the Commission, we must affirm the decision. *Minnesota Mining & Mfg. v. Baker*, 337 Ark. 94, 989 S.W.2d 151 (1999). Normally, we only review the findings of the Commission and not those of the ALJ. *Logan County v. McDonald*, 90 Ark. App. 409, 206 S.W.3d 258 (2005). However, when the Commission adopts the conclusions of the ALJ, as it is authorized to do, we consider both the decision of the Commission and the decision of the ALJ. *Death & Permanent Total Disability Trust Fund v. Branum*, 82 Ark. App. 338, 107 S.W.3d 876 (2003).

Appellants argue that there is no substantial evidence that appellee suffered a compensable injury in January, August, or October. In regard to the January 2005 incident, appellants argue that medical records do not support appellee's allegation that he was exposed to chemicals in January 2005, that there are no records to support appellee's claim that he properly reported the alleged incident in January 2005, that the mechanics of appellant's chemical containment system do not support appellee's allegations, and that the chemicals used in the area in question were not hazardous. In regard to appellee's second chemical exposure, appellants argue that there are no records to support any incident in

August, that there was a pipe leak in October but there was no indication that the chemicals were caustic, and that the record indicates numerous inconsistencies regarding the onset of appellee's symptoms that cast doubt on the allegations.

To receive workers' compensation benefits, a claimant must establish (1) that the injury arose out of and in the course of the employment, (2) that the injury caused internal or external harm to the body that required medical services, (3) that there is medical evidence supported by objective findings establishing the injury, and (4) that the injury was caused by a specific incident and was identifiable by the time and place of the occurrence. Ark. Code Ann. § 11-9-102(4) (Supp. 2007). As the claimant, appellee bears the burden of proving a compensable injury by a preponderance of the credible evidence. *See* Ark. Code Ann. § 11-9-102(4)(E)(i) (Supp. 2007). Compensation must be denied if the claimant fails to prove any one of these requirements by a preponderance of the evidence. *Mikel v. Engineered Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997). Questions concerning the credibility of witnesses and the weight to be given their testimony are within the exclusive province of the Commission. *White v. Gregg Agricultural Ent.*, 72 Ark. App. 309, 37 S.W.3d 649 (2001).

In the instant case, there is no question that appellee suffered from RADS. However, in order to be compensable, appellee had to prove that the injury was caused by a specific incident identifiable by the time and place of the occurrence. Appellee met his burden. Appellee and his witnesses testified that appellee was exposed to chemical fumes in January

2005 while working for Superior. According to the testimony, a fan blew fumes in appellee's direction and appellee immediately began to complain. Thus, appellee's exposure could be traced back to the January 2005 incident. Appellee's witnesses testified that appellee reported the incident to his supervisor, Linson, who did nothing about it. Superior put forth witnesses stating that there was no record of such an incident and that they only learned of the alleged exposure in October 2005. Appellee informed medical providers that he was exposed to hydrochloric muriatic acid and the symptoms he complained of were the type of symptoms one exposed to those chemicals would experience. Appellants insisted that although hazardous chemicals were used in the plant, the chemicals used in appellee's area were not hazardous. In sum, appellants' arguments merely challenge the credibility of appellee and his witnesses concerning the January 2005 incident. As a general rule, we defer to the Commission's credibility determination. *See White, supra*. Therefore, as substantial evidence supports the Commission's finding that appellee suffered a compensable injury in the form of chemical exposure in January 2005, we affirm. Appellants also make credibility arguments to support their contention that appellee did not suffer a compensable injury in August 2005. The Commission was faced with conflicting testimony, and chose to believe appellee's version. Accordingly, we affirm the Commission's decision that appellee suffered a compensable injury in August 2005.

Affirmed.

ROBBINS and MARSHALL, JJ., agree.