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Central Jersey Claims Association Legal Update

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Brown v. Sodexo

Decided October 2, 2014 by the Honorable George H. Gangloff, Jr., J.W.C.

Petitioner filed a motion seeking surgery for an alleged cervical myelopathy resulting from a 2008 work accident.

In her direct testimony taken in connection with the motion, petitioner asserted that her pain level was still a "10 out of 10." She testified that her neck, shoulder and arm pain were worsening. She testified, " I don't go out. I don't socialize. I don't cook. I don't clean. Everything is dependent on my daughter…I don't go out. I don't even socialize with my friends. You know right now all I do is just go to church. That's it. That's all I do. I don't go out anymore." (emphasis added)

Petitioner also testified that she was losing strength in her right arm and was now having difficulty in performing relatively simple day-to-day tasks including dressing and undressing.

Cross-examination of the petitioner was delayed pending petitioner's counsel providing respondent with updated treating records from petitioner's primary care physician, Dr. Claudia Petruncio.

When the records were provided and cross-examination commenced, numerous issues came to light including the fact that the petitioner was currently a full time student at Rutgers, took either the bus or train to school and carried her own books for school.

The judge of compensation ultimately denied petitioner's motion because the petitioner failed to meet her burden of proving that she actually suffered from this condition and such condition was causally related to this work accident.

The judge's denial was based on his finding that the petitioner made stark and material contradictory assertions and her medical expert was not credible and persuasive as he was unfamiliar with the petitioner's pertinent medical history, daily activities and testimony. Furthermore, her medical expert was unaware of significant intervening accidents and unfamiliar with the petitioner's treating records.

Hallquist v. E.I. Dupont de Nemours, A-6223-12T2 (App. Div. October 10, 2014).

Decedent, Gerald Hallquist, worked as a laboratory technician for E.I. Dupont de Nemours (hereinafter Dupont) from 1968 until his retirement in 1998. Between 1977 and 1982, he worked in the quality control lab with liquid chemicals, including benzene. He wore safety gloves and a uniform supplied by Dupont. When working with certain chemicals, the decedent was required to wear additional protective clothing.

Prior to his death on June 7, 2010 at the age of 76, decedent filed a claim petition alleging that his exposure to chemicals led to multiple myeloma. Decedent gave a deposition de bene esse in which he stated that he tested benzene, but he did not state how often that occurred during the five year period he worked in the quality control lab. He said that he knew what benzene smelled like, but he never quantified the number of times he smelled this chemical while working in the lab. There were chemical spills when he worked in the lab, but he was not sure of any specific chemical involved. The decedent testified that he smoked a pack of cigarettes daily between the ages of 19-21.

Mary Hallquist, decedent's widow, filed a dependency claim petition against Dupont following the petitioner's death. Petitioner produced Dr. Leon Waller, a primary care physician with no subspecialty as an expert in internal medicine. Dr. Waller gave an opinion that the decedent's multiple myeloma was caused by his "long-term exposure" to benzene during the period of time in the quality control lab. At first, he said that the exposure would have to occur on a daily basis during this time period for it to have caused the decedent's illness. He later testified that the exposure needed to have occurred once or twice a week, three times a week, or

at least a few times a week. Dr. Waller conceded that he did not know how many times the decedent worked with benzene or how many times he smelled it. However, he said the exposure had to have occurred 100 to 150 times a year for him to draw causal relationship between benzene exposure and multiple myeloma.

Respondent produced a toxicologist, Dr. Shanna Collie Clark, Ph.D, as its expert. She said that benzene is a carcinogen, but there is no conclusive research showing that benzene exposure causes multiple myeloma. It is related to leukemia, however. Dr. Clark testified that benzene as a causal factor for leukemia would be a ten, but only a one or a two for multiple myeloma. She further said that there was insufficient epidemiological evidence to draw causation, and there was a notable lack of exposure as well. Dr. Clark said that the decedent wore gloves and protective clothing. Samples were placed by another individual under a hood and decedent took "one drop, one c.c. in a syringe into a closed system while he's testing it." Dr. Clark also testified that benzene exposure cannot be linked to a multiple myeloma condition that occurs 25 years down the road.

The judge of compensation ruled for respondent and dismissed the case. The judge noted that the decedent used a closed instrument, a syringe, injecting the test material into a closed machine in a room that had ceiling fans throughout the room, sucking vapors out of the room. Petitioner appealed to the Appellate Division, which affirmed the dismissal of this case.

The Appellate Division observed that petitioner did not offer proof that the decedent was exposed to benzene 100 to 150 times per year, which even her own expert Dr. Waller said was necessary to draw causation. Blood tests taken after the alleged exposure from 1977 to 1982 showed no evidence of benzene exposure in the decedent. The court noted that the decedent never quantified the amount of his exposure and never testified that benzene was spilled near him. For these reasons, the Appellate Division affirmed the dismissal of this case.

This case can be found at Hallquist v. E.I. Dupont de Nemours, A-6223-12T2 (App. Div. October 10, 2014).