

FINAL AWARD DENYING COMPENSATION  
(Affirming Award and Decision of Administrative Law Judge)

Injury No.: 90-183235

Employee: Thomas Anderson  
Employer: General Motors  
Insurer: Self-Insured  
c/o Sedgwick Claims Management Services  
Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund  
Date of Accident: Alleged February 19, 1990, amended date April 29, 1985  
Place and County of Accident: Alleged St. Charles County, Missouri

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by section 287.480 RSMo. Having reviewed the evidence and considered the whole record, the Commission finds that the award of the administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Act. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated April 14, 2006, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Koren M. Mueller, issued April 14, 2006, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 28<sup>th</sup> day of July 2006.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

\_\_\_\_\_  
William F. Ringer, Chairman

\_\_\_\_\_  
Alice A. Bartlett, Member

\_\_\_\_\_  
John J. Hickey, Member

Attest:

\_\_\_\_\_  
Secretary

**AWARD**

Employee: Thomas Anderson

Injury No. 90-183235

Dependents: N/A

Employer: General Motors

Additional Party: State Treasurer, as Custodian of the Second Injury Fund

Insurer: Self-Insured c/o Sedgwick Claims Management Services

Hearing Date: January 31, 2006; formally submitted February 28, 2006 Checked by: KMM/lsn for bb

Before the  
**DIVISION OF WORKERS'  
COMPENSATION**  
Department of Labor and Industrial  
Relations of Missouri  
Jefferson City, Missouri

### **FINDINGS OF FACT AND RULINGS OF LAW**

1. Are any benefits awarded herein? No
2. Was the injury or occupational disease compensable under Chapter 287? No
3. Was there an accident or incident of occupational disease under the Law? No
4. Date of accident or onset of occupational disease: February 19, 1990, amended date April 29, 1985
5. State location where accident occurred or occupational disease was contracted: St. Charles County, Missouri
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes
7. Did employer receive proper notice? N/A
8. Did accident or occupational disease arise out of and in the course of the employment? No
9. Was claim for compensation filed within time required by Law? Yes
10. Was employer insured by above insurer? Yes
11. Describe work employee was doing and how accident occurred or occupational disease contracted:  
Auto Assembly
12. Did accident or occupational disease cause death? No
13. Part(s) of body injured by accident or occupational disease: Alleged lung injury
14. Nature and extent of any permanent disability: None
15. Compensation paid to-date for temporary disability: None
16. Value necessary medical aid paid to date by employer/insurer? None
  
17. Value necessary medical aid not furnished by employer/insurer? N/A
18. Employee's average weekly wages: disputed
19. Weekly compensation rate: disputed
20. Method wages computation: disputed

### **COMPENSATION PAYABLE**

21. Amount of compensation payable: None
  
22. Second Injury Fund liability: Open

TOTAL: NONE

23. Future requirements awarded: None

Said payments to begin as of the date of this Award and to be payable and be subject to modification and review as provided by law.

The compensation awarded to the claimant shall be subject to a lien in the amount of \_\_\_ of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant:

## **FINDINGS OF FACT and RULINGS OF LAW:**

Employee: Thomas Anderson

Injury No: 90-183235

Before the  
**DIVISION OF WORKERS'  
COMPENSATION**

Department of Labor and Industrial Relations of Missouri  
Jefferson City, Missouri

Dependents: N/A

Employer: General Motors

Additional Party State Treasurer, as Custodian of the Second Injury Fund

Insurer: Self-Insured c/o Sedgwick Claims Management Services

Checked by: KMM/lsn for bb

## **PRELIMINARIES**

A final hearing was held January 31, 2006 at the St. Charles Division of Workers' Compensation office. The last date for submitting post-hearing briefs was February 28, 2006 and therefore the claim was finally submitted on that date. Thomas Anderson (hereinafter "Claimant") was represented by Ellen E. Morgan. General Motors (hereinafter "Employer") was self-insured and represented by Daniel J. Harlan. The Second Injury Fund remains open by agreement. Ms. Morgan requested a 25% attorney fee on all benefits.

The parties stipulated that on or about February 19, 1990 Claimant was in the employment of Employer working in St. Charles County, Missouri. The parties further stipulated that a claim for compensation was filed within the time prescribed by law. The parties stated that the appropriate rates were in dispute. Employer has not paid any benefits to date.

The parties agreed and stipulated that the issues to be resolved in this case were as follows:

1. Arising out of and in the course of employment
2. Occupational disease
3. Notice
4. Medical causation
5. Future medical care
6. Rate
7. Nature and extent of temporary total disability
8. Nature and extent of permanent partial disability

Claimant appeared at the hearing and testified on his own behalf.

### EXHIBITS

Claimant offered the following exhibits which were admitted into evidence without objection:

Exh. A: Dr. Schuerman medical records

Exh. B: Dr. Richard Sohn medical records

Exh. C: Barnes-Jewish Hospital medical records

Exh. D: Saint Louis University Hospitals medical records

Exh. E: Drs. Zimmerman and Willis medical records

Exh. F: Wesley Norton deposition taken June 26, 2002

Exh. G: Dr. Robert Poetz deposition taken October 10, 2005

Exh. H: Employer medical history form dated March 5, 1985

Employer offered the following exhibits which were admitted into evidence without objection:

Exh. 1: Dr. Robert Bruce deposition taken February 13, 2003

Exh. 2: Employer dispensary records

Exh. 3: Dr. Ralph Graff deposition taken November 18, 2004

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the substantial and credible evidence, as well as the applicable law I find the following:

Only the evidence necessary to support this award has been summarized. Any objections not expressly ruled on in this award are overruled. Claimant testified that he was born on September 5, 1955 and that he began working for Employer April 4, 1984. He testified that he had no lung treatment or diagnoses prior to working for Employer. At Employer's plant he began as an assembler and painter. He sprayed fenders and quarter panels in the paint booth with a color coat and then a clear coat. There were four painters in the paint booth and the booth was twice the size of the hearing room. He did not recall what type of ventilation was in the booth. He testified that dust would build like a cloud and there was water running down a wall to keep the dust down. He testified that the water did not work correctly and that the plant was shut down in 1986 or 1987 because of problems with spray. Claimant testified that when he worked he did not use a mask or respirator. His base pay was approximately \$14.00 to \$16.00 per hour, but he was not sure.

He also worked as a team captain and learned every job in the plant which included seal gun and phosphate dip. He did not have respiratory protection in the phosphate dip area either. He had no respiratory protection in any area he worked at Employer. He left Employer in 1998.

In December 1986 he testified to his first chest problems consisting of a cold, deep cough and sore chest. He was examined by Dr. Zimmerman and was told of a spot on his chest x-ray. He had a repeat chest x-ray in 1987. He was referred to a specialist, Dr. Naunheim, who performed two biopsies. Claimant testified he became afraid and put off surgery which he eventually had in November 1987 when he was diagnosed with Hodgkin's disease. He completed chemotherapy and was off work for approximately one year after the surgery, but he could not recall how he was paid. Employer had a lay-off after his chemotherapy treatment and Claimant testified he was called back to Employer in 1990 or 1991. He returned to work with respiratory restrictions; he needed a dust-free and clean environment. He could not recall where he worked in the plant. He worked from 1997 until 1998 on the air conditioning line, where there were no fumes. He was later bumped from that job and could find no other position within his restrictions. He testified the plant doctor eventually told Claimant there was no work at Employer within his respiratory restrictions. He testified he was restricted out of the plant. Claimant testified his Hodgkin's disease has been in remission since approximately 1991.

Claimant testified that he had no respiratory problems prior to working for Employer. He stated he was a ballplayer and an athlete. After the diagnoses and treatment for Hodgkin's disease he testified to breathing problems and he has partial use of only one lung. He complained of shortness of breath with dust, fumes and when walking for a long duration. He also has problems with his bladder and numbness in his fingertips that he relates to chemotherapy. He uses a new inhaler and undergoes breathing tests every four months.

On cross-examination Claimant testified he was on unemployment from 1993 through 1996 due to the plant shutdown. He also worked for his father at Anderson Automotive. Claimant testified that the April 29, 1985 hire date listed in his personnel file at Employer is a mistake and he insisted he was hired in 1984. Claimant could not recall any treatment for breathing problems prior to working at Employer. He specifically could not recall lung treatment with Dr. Duarte. He did not recall treatment for episodes of bronchitis or asthma in October 1974. He could not recall treatment for bronchitis, asthma and acute tracheal bronchitis in 1978. He did not recall admission to Normandy Osteopathic Emergency Department May 6, 1981 for treatment of minor wheezing.

On cross-examination Claimant admitted he listed a history of asthma and hay fever in 1965; sinus trouble in 1975; bronchitis in 1977 and pneumonia in 1956-1957 on his Employer medical history form that he completed March 5, 1985. He did not recall that Dr. Spezia treated him in 1981 for shortness of breath and chest discomfort.

Dr. Poetz testified by deposition on Claimant's behalf. Dr. Poetz evaluated Claimant on September 16, 2004. He testified that there is "strong evidence that there is a higher incidence of Hodgkin's disease in workers who are exposed to a variety of chemicals, especially solvents, degreasing agents, oils, resins, pesticides, other inhaled and contact chemicals and inhaled irritants." Dr. Poetz concluded in his report that Claimant's injury in 1990 is a substantial and contributing factor in the development of Hodgkin's disease, chronic obstructive pulmonary disease and left upper extremity disability. He provided disability ratings as well. Dr. Poetz testified that at the time of his examination Claimant's Hodgkin's disease was in remission. Dr. Poetz testified that he did not obtain any x-rays or pulmonary function studies. Dr. Poetz testified that Claimant denied any other significant bronchitis prior to the date of the injury in this case. Dr. Poetz also testified that Claimant did not have a history of bronchial asthma prior to the injury.

Wesley Norton testified on Employer's behalf by deposition that he was the industrial hygienist for the Wentzville plant where Claimant worked. He testified that respiratory protection was not required in the paint booth because there were no exposure levels that required respiratory protection. He testified that the paint booth was a wet booth to collect the overspray particulate and also had a ventilation system. Mr. Norton testified that the representative air sample studies he performed in October 1987 revealed that the solvent levels were below limits of detection. They also revealed levels of particulate below permissible limits. He added that the particulates reflected in the sample results contained no toluene.

Dr. Bruce testified by deposition on Employer's behalf and stated he evaluated Claimant on June 7, 1994. Dr. Bruce testified he is board certified in internal medicine with a subspecialty in pulmonary disease. Dr. Bruce concluded Claimant had Hodgkin's disease stage 2A, which had been successfully treated with chemotherapy, and there was no evidence of recurrence. Dr. Bruce testified that Hodgkin's disease is a malignancy of the lymphatic system and that the staging system showed that it was limited to the thorax. He testified that the etiology of Hodgkin's disease is unknown and that there is no known environmental cause of Hodgkin's disease. Dr. Bruce testified he reviewed the March 1985 pre-employment x-ray and that it revealed evidence of an abnormality consisting of hilar enlargement, paratracheal enlargement and prominence in the aortical pulmonary window similar to what was found at the time of the later diagnosis of Hodgkin's disease. Claimant's

pre-employment spirometry was also abnormal. Dr. Bruce testified that there was nothing to indicate that the Hodgkin's disease was in any way associated with Claimant's employment.

Dr. Graff testified by deposition on Employer's behalf and stated he evaluated Claimant on August 31, 1993. Dr. Graff testified that he had the opportunity to review the pre-employment x-ray taken in March 1985 with Dr. Naunheim, who was involved in the diagnosis of Claimant's Hodgkin's disease. Dr. Graff testified (Claimant's objection overruled) that the x-ray showed a small right superior hilar mass and he concluded that the Hodgkin's disease was present prior to Claimant's employment with Employer. Dr. Graff testified that there was no medical support for the idea that Claimant's exposure to chemicals at Employer was either a cause or aggravated his Hodgkin's disease.

#### Issues relating to medical causation

Claimant alleges that his employment with Employer exposed him to toxins and fumes causing injury to his lungs. Employer argues there was no evidence of exposure to chemical fumes or other substance that caused Hodgkin's disease or lung injury. Section 287.020.2 RSMo (2000) provides, in part, that "An injury is compensable if it is clearly work related. An injury is clearly work related if work was a substantial factor in the cause of the resulting medical condition or disability." Claimant must establish a causal connection between the accident and the claimed injuries. McGrath v. Satellite Sprinkler Systems, 877 S.W.2d 704, 708 (Mo.App. 1994). Whether employment is a substantial factor in causing the injury is a question of fact. Sanderson v. Porta-Fab Corp., 989 S.W.2d 599,603 (Mo.App. 1999). Determinations regarding medical causation require the assistance of expert medical testimony. Medical causation not within lay understanding or experience requires expert medical evidence. Wright v. Sports Associated, Inc., 887 S.W.2d 596 (Mo.banc 1994). The weight to be accorded an expert's testimony should be determined by the testimony as a whole and less than direct statements of reasonable certainty will be sufficient. Choate v. Lily Tulip, Inc., 809 S.W.2d 102, 105 (Mo.App. 1991). When medical theories conflict, deciding which to accept is an issue reserved for determination of the fact finder. Hawkins v. Emerson Electric Co., 676 S.W.2d 872, 877 (Mo.App. 1984).

In the present case, there are conflicting opinions regarding the etiology of Claimant's Hodgkin's disease and lung disease. Whether Claimant was exposed to chemical fumes or substances that are harmful is also in dispute. Mr. Norton testified that there was no toluene in the particulates sampled in October 1987. He also testified that there was no exposure level that even required respiratory protection. Dr. Poetz was the only physician to opine that Claimant's Hodgkin's disease was caused by exposures at Employer. He did not identify the specific substance at Employer that could have caused Claimant's pulmonary problems. Dr. Poetz evaluated Claimant in September 2004, almost twenty years after the date of alleged exposure. He did not conduct additional testing on Claimant. His opinion is conclusory in nature.

Dr. Graff testified he reviewed the medical literature and did not find a known cause for the development of Hodgkin's disease. He testified Claimant's mass was present on the March 1985 pre-employment x-ray. He testified that Claimant's Hodgkin's disease was present prior to his employment with Employer.

Dr. Bruce testified that there was no environmental cause for Hodgkin's disease. He agreed with Dr. Graff's analysis of the significance of the March 1985 pre-employment x-ray findings. I am persuaded by the opinions of Dr. Graff and Dr. Bruce regarding medical causation. Claimant failed to meet his burden to prove he was exposed to chemicals or fumes at Employer that are medically causally related to the development of Hodgkin's disease. Claimant had a history of pulmonary problems prior to employment with Employer and had evidence of abnormalities in his pre-employment testing with Employer as evidenced by the March 1985 x-ray and spirometry testing.

Based upon the substantial and competent evidence, I find that Claimant's claim for compensation is denied and all remaining issues are moot.

#### CONCLUSION

Based upon the above findings, Claimant's claim for compensation is denied.

Date: April 20, 2006

Made by: /s/ KOREN M. MUELLER  
KOREN M. MUELLER  
Administrative Law Judge  
Division of Workers' Compensation

A true copy: Attest:

/s/ PATRICIA "PAT" SECREST  
PATRICIA "PAT" SECREST  
Director  
Division of Workers' Compensation