

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

Injury No.: 08-121100

Employee: Dan Estebo
Employer: Webco, Inc.
Insurer: American International Insurance Company
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund

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 Law. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated December 13, 2010, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Victorine R. Mahon, issued December 13, 2010, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 13th day of July 2011.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

DISSENTING OPINION FILED
Curtis E. Chick, Jr., Member

Attest:

Secretary

Employee: Dan Estebo

DISSENTING OPINION

I have reviewed and considered all of the competent and substantial evidence on the whole record. Based on my review of the evidence as well as my consideration of the relevant provisions of the Missouri Workers' Compensation Law, I believe the decision of the administrative law judge (ALJ) should be reversed and employee should be awarded past medical expenses, future medical care, and permanent partial disability benefits.

Employee alleges he sustained occupationally-induced asthma due to his exposure to paint fumes at work. The ALJ found that employee failed to satisfy his burden of proving that the work-exposure caused his occupationally-induced asthma or airway sensitivity condition because he provided no objective symptoms of the disease.

The outcome of this case largely depends on the weight given to the two experts' opinions. Based on the totality of the evidence, I find the opinions of employee's expert, Dr. Koprivica, to be more credible than the opinions of employer's expert, Dr. Parmet.

Dr. Koprivica affirmatively testified by deposition to the following: 1) employee has reactive airways disease; 2) employee was exposed to more paint fumes at work than in non-employment life; 3) paint fumes are known respiratory irritants; and 4) employee's work exposure was the prevailing factor in employee's development of reactive airways disease.

Dr. Koprivica testified that he came to the aforementioned conclusions because there was a clear-cut correlation between employee's work-exposure, the development of his symptoms, and the contemporaneous medical records. Dr. Koprivica went on to point out that employee had no history of reactive airways disease before he began working for employer. Lastly, Dr. Koprivica noted that there was no evidence that employee was being exposed to any pulmonary irritants away from work while he was experiencing respiratory symptoms.

Dr. Koprivica opined that employee sustained 15% permanent partial disability of the body as a whole as a result of his work-exposure to paint fumes. Dr. Koprivica also opined that employee had 25% preexisting permanent partial disability of his right shoulder due to a motorcycle accident. Finally, Dr. Koprivica opined that employee's primary injury combined with his preexisting disability to result in a 10% load factor.

With regard to Dr. Parmet's opinions, employer only offered his medical reports, not his deposition. Consequently, Dr. Parmet's opinions were not subject to cross-examination. Additionally, Dr. Parmet's opinions in his report were questionable at best. Dr. Parmet opined that employee's respiratory symptoms were "more likely than not" due to allergies associated with such common allergens as cat dander, grass, trees, and mold. However, Dr. Parmet did not explain why employee's symptoms alleviated when he was out of employer's work-environment. It seems that someone having respiratory symptoms associated with allergies to cat dander, grass, trees, and mold would continue having such symptoms indefinitely due to their constant presence in everyday life, but employee's symptoms alleviated correlative to his work separation.

Employee: Dan Estebo

- 2 -

In addition to the aforementioned, in Dr. Parmet's second report dated June 3, 2010, he appears to give a great deal of weight to the absence of any records showing employee to have abnormal pulmonary functions. Dr. Parmet giving this absence any weight at all cuts to his credibility in light of the fact that the reason there are no pulmonary functions test records – abnormal or normal – is because employee was unable to complete the test. Employee testified that he was unable to complete the test because he could not breathe adequately into the testing device.

Dr. Koprivica provided affirmative opinions establishing a causal connection to employee's work-exposure and his permanent disability. Dr. Parmet simply appears to be uninformed.

Based upon the foregoing, I find Dr. Koprivica's opinions to be more credible than Dr. Parmet's. Therefore, I believe the ALJ's award should be reversed and employee should be awarded past medical expenses, future medical care, and permanent partial disability benefits pursuant to Dr. Koprivica's ratings.

I respectfully dissent from the decision of the majority of the Commission.

Curtis E. Chick, Jr., Member

AWARD

Claimant: Dan Estebo

Injury No. 08-121100

Dependents: N/A

Employer: Webco, Inc.

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

Additional Party: Treasurer of Missouri as Custodian
of the Second Injury Fund

Insurer: American International Insurance Company

Hearing Date: October 6, 2010

Checked by: VRM/db

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: Alleged September 30, 2008.
5. State location where accident occurred or occupational disease was contracted: Alleged Greene County, Missouri.
6. Was above Claimant in the employ of above employer at time of alleged accident or occupational disease? Yes.
7. Did employer receive proper notice? Not determined.
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 Claimant was doing and how accident occurred or occupational disease contracted: Claimant alleges occupational asthma from pain fumes.
12. Did accident or occupational disease cause death? No. Date of death? N/A.
13. Part(s) of body injured by accident or occupational disease: Alleged respiratory condition.

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? None.
18. Claimant's average weekly wages: \$460.80.
19. Weekly compensation rate: \$307.20.
20. Method wages computation: By agreement of the parties.

COMPENSATION PAYABLE

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

TOTAL: NONE.

23. Future requirements awarded: None.

FINDINGS OF FACT and RULINGS OF LAW:

Claimant: Dan Estebo

Injury No. 08-121100

Dependents: N/A

Employer: Webco, Inc.

Before the
**DIVISION OF WORKERS'
COMPENSATION**
Department of Labor and
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INTRODUCTION

Daniel R. Estebo (Claimant) alleges that he developed occupationally-induced asthma as a result of his exposure to paint fumes while employed with Webco, Inc. The occupational condition is alleged to have culminated on or about September 30, 2008. Webco, Inc., and its insurer, American International Insurance Company (hereafter referenced collectively as Employer), deny liability. The parties appeared for hearing before the undersigned Administrative Law Judge on October 6, 2010, in Springfield, Greene County, Missouri. Attorney Randy Alberhasky represented Claimant. Attorney Ronald G. Sparlin represented Employer. The Second Injury Fund appeared by Assistant Attorney General Barbara Bean.

STIPULATIONS

The parties stipulated to the following:

Webco, Inc., is an employer within the meaning of the Missouri Workers' Compensation Law, and was fully insured on September 30, 2008, by American International Insurance Company. Claimant was a covered employee. Claimant's average weekly wage was \$460.80, yielding permanent partial disability rate of \$307.20. There is no dispute as to venue, jurisdiction, or statute of limitations.

ISSUES

1. Did Claimant sustain an injury by occupational disease?
2. If yes, did it arise out of and within the course of Claimant's employment?
3. If yes, did Claimant provide notice as required by law?
4. If yes, to what extent is Claimant permanently and partially disabled?
5. Is Claimant entitled to past medical benefits?
6. Is Claimant entitled to future medical benefits?
7. Is Claimant entitled to enhanced disability from the Second Injury Fund?
8. Is Claimant's Exhibit Z admissible?

EXHIBITS

The following exhibits were offered by Claimant and admitted:

- A. Clark Family Medicine, medical records and bills, certified 4/14/2009.
- B. Concentra, 31 pages, certified 5/12/2009.
- C. Cox Hospital, 11 pages, certified 5/6/2009.
- D. Ferrell-Duncan Clinic, 30 pages, certified 12/8/2009.
- E. Jordan Valley Community Health Center, 18 pages, certified 4/14/2009.
- F. Partial note from Dr. Jonathan Clark¹
- G. Wal-Mart Pharmacy, 6 pages, certified 7/6/2009.
- H. The claim filed 4/8/2009.
- I. The amended claim filed 5/6/2009.
- J. The answer by the Employer/Insurer 5/22/2009.
- K. The amended claim filed 7/15/2009.
- L. The answer filed by the Employer/Insurer on 7/27/2009.
- M. The answer filed by the Second Injury Fund on 8/6/2009.
- N. Notice of Complete Medical Report of Dr. Koprivica.
- O. Disclosure of Dr. Koprivica report to Second Injury Fund, 7/15/2009.
- P. Additional records disclosed, on 7/16/2009.
- Q. Records disclosed to Second Injury Fund on 9/10/2009.
- R. Correspondence to Second Injury Fund dated 11/16/2009.
- S. Correspondence dated 1/18/2010.
- T. Correspondence to Second Injury Fund dated 3/29/2010.
- U. Three work-place photographs – U1, U2, and U3,
- V. Correspondence dated 10/5/2010.
- W. Deposition of Dr. P. Brent Koprivica with exhibits:

¹ There was an objection to the admission of Exhibit F based on the seven-day-rule. Exhibit F, which is a note written by Dr. Clark regarding Claimant's need to avoid paint fumes, contained a causation opinion. Although the objection was sustained for the admission of the entire exhibit, a redacted version of Exhibit F was admitted into evidence and is considered on the issue of notice.

Y. Form regarding painting^{2 3}

The following exhibits were offered on behalf of Employer and admitted:

1. Employer's answer dated 5/22/2009.
2. Medical Report of Dr. Parmet.
6. A Respirator User Manual.
7. A Personal Breathing Unit Manual.⁴

The Second Injury Fund offered no exhibits.

FINDING OF FACT

Claimant Daniel Estebo, age 51 years, is a non-smoker. His hobbies include gardening and a weekly game of golf. He is 5' 11" tall and weighs about 250 pounds. He currently works as a manager for a pizza parlor and operates his own part-time photography business. His past employment has included work for a pest control company, as a salesperson, and as a photographer. He admits that he has suffered from seasonal allergies and prior chest tightness, which he attributes to a possible cardiac condition.

Claimant began working for Webco, Inc. (Employer) in October 2006. He was assigned duties as a painter, working 40 hours per week. As a painter, much of Claimant's work was performed in a painting booth. The units needed to be painted were pulled into the booth. The painter wore a full body suit and air was pumped into suit. The booth, which measured about 25 by 50 feet, was equipped with a draft system that pulled paint fumes or odor from the area. Exhibit U contains three photographs depicting the painting booth and surrounding area. Claimant admitted, when painting, he wore protective

² There is no Exhibit X.

³ Exhibit Z is a study by CDC regarding occupationally induced asthma. The hearsay objection to the document is sustained. Exhibit Z also is contained in a sealed envelope and shall remain with the case for purposes of review. It is excluded, as discussed under the Conclusions of Law portion of this Award.

⁴ Employer withdrew Exhibits 3, 4, and 5, as they were medical records that were duplicative of those offered by Claimant and admitted.

gear and was inside the booth which had its own vent system. But Claimant contended that not all particulate was sucked out of the surrounding area.

There are two situations in which painting is not performed wholly within the booth. The first occurs when the item to be painted is too large to fit into the booth. The other situation occurs when there is touch-up painting needed after the major portion of the painting is complete. Claimant believed he was exposed to irritants even though he may have been 20 feet away from this type of painting. Although Claimant contended that these situations occurred frequently, Rod Cowan, Claimant's supervisor, disagreed.

Rod Cowan, a Webco production supervisor and veteran employee of the company for 17 years, is familiar with the painting procedures. He acknowledged that some units were too large to fit completely in the paint booth. He agreed that sometimes the door remains open. But he identified a feature of the booth that was specifically designed to deal with that situation and pull the air from the entire area around the booth and out through the exhaust system. This is designed to prevent fumes from escaping the area. And while he also admitted that some touch-up painting is performed outside of the booth, he said this was a minimal amount of painting. Moreover, employees painting in these circumstances use a floor fan to direct any fumes toward the plant-wide exhaust system which is always functioning. The plant exhaust system consists of 25 to 30 fans (36-inch prop fans) mounted in the ceiling, which are always in working order and help ventilate the building.

I find Rod Cowan's testimony credible. Given his years of experience and extensive knowledge of the painting functions, where Mr. Cowan's testimony differs from that of Claimant, I resolve the factual discrepancies in favor of Employer.

Medical Treatment

Within six months of starting work for Employer, Claimant complained of breathing problems. On April 10, 2007, Claimant went to Cox urgent care with complaints of breathing difficulties. The medical record indicates that Claimant had used inhalers in the past, but Claimant contended the medical

record was incorrect on this point. The examination revealed faint wheezing only. The chest x-ray was normal. He was assessed with bronchitis (not asthma) and referred to his primary care physician.

On April 13, 2007, Employer sent Claimant to Concentra for treatment. Claimant completed an OSHA respiratory medical evaluation. He denied having any shortness of breath, coughing, wheezing, or chest pain on that date. Although he had been directed to report for a Pulmonary Function Study, the test was never completed at Concentra. Subsequently, Employer reassigned Claimant from his painting duties, although Claimant contends he still was exposed to paint fumes.

On April 27, 2007, Claimant saw Dr. Clark, who advised Claimant to continue with the Albuterol and Flovent that he received from the Cox urgent care earlier in the month. He gave Claimant a note to avoid paint fumes. He also recommended that Claimant work at a different job.

On September 5, 2008, Claimant reported chest tightness and trouble breathing, although Dr. Clark found no wheezes, crackles or rhonci. Dr. Clark provided Claimant a note on this date stating that he needed to avoid paint fumes. Claimant said he gave this note to his Employer. Subsequently, Claimant saw Dr. Clark one time from this "asthma-like symptoms." (Exhibit A). This was on November 18, 2008. There is no evidence that Claimant has sought any medical care from his symptoms since 2008.

Current Condition

Claimant has since been laid-off from Webco. He testified that since his lay-off, his symptoms improved, but did not completely dissipate. He has only needed to use an inhaler a few times since leaving Webco. He had no doctor-imposed restrictions. He said in general he can do whatever he needs to do, although he has difficulty running.

Pre-existing Conditions or Disabilities

Claimant had a preexisting right shoulder injury that occurred in 1986 as a result of a motorcycle accident. Claimant continues to have occasional pain and diminished motion in that right shoulder, which limits him from raising it overhead. Claimant had reached maximum medical improvement for his right shoulder in 1996 and has not had additional treatment since that time up to the date of the hearing.

Claimant had no physician-imposed restrictions due to the right shoulder injury. He takes no prescription medications and continued to perform physically demanding work, despite the right shoulder condition.

Expert Evidence

Dr. Koprivica – Employee’s Expert

Dr. Koprivica is board certified in occupational medicine. Dr. Koprivica diagnosed Claimant with “reactive airways disease from his workplace exposure at Webco through September 22, 2008.” (Exhibit W, p. 15). Dr. Koprivica defined reactive airways disease as an “occupational asthma where you’re developing brochospasm due to the fume exposure to the lungs” (Exhibit W, p. 16). Dr. Koprivica believed Claimant’s exposure to paint fumes at Webco was the prevailing factor in causing the occupational risk. He assigned a 15 percent permanent partial disability to the body as a whole for the occupational pulmonary exposure through September 22, 2008. He said Claimant should avoid chemical, dust and fume exposures at work.

Dr. Koprivica also opined that Claimant sustained a 25 percent permanent partial disability of the right upper extremity at the level of the shoulder for the preexisting right shoulder injury. He restricted Claimant from repetitive or sustained activities above shoulder or girdle level, especially weighted type activities. He believed the primary and pre-existing disabilities synergistically combined by 10 percent.

At his deposition, Dr. Koprivica admitted that Claimant was asymptomatic when he examined him. Dr. Koprivica found no evidence of wheezing or brochospasm. Claimant had normal spirometry tests. Dr. Koprivica based his opinion on “clear-cut documented subjective correlation between the exposure, the development of his symptoms, contemporaneous record, documentation of brochospasm associated with exposures.” (Exhibit W, p. 16). Dr. Koprivica found no subjective association with exposures away from work prior to the exposure at Webco. Claimant is a non-smoker. Dr. Koprivica conceded, however, that Claimant’s condition was “not a major pulmonary impairment.” (Exhibit W, p. 17).

Regarding future medical needs, Dr. Koprivica said it was “probable” that Claimant would need treatment “with exposures when he becomes symptomatic” and his “actual clinical course will dictate

when it occurs, if it occurs.” (Exhibit W, pp. 19-20). Dr. Koprivica said the objective test to confirm the diagnosis of RAD was a methacholine challenge. He did not recommend such testing in Claimant’s case because the test, itself, poses significant risks.

On cross-examination, Dr. Koprivica admitted that what he knew of the protective clothing worn by workers at Webco was based on three photographs that were provided to him. He did not know if Claimant was exposed to paint fumes once a day or once every six months. Dr. Koprivica did not have any industrial hygiene data that measured the chemicals in the air. He did not have a clear understanding of the kind of exposures that were occurring in Employer’s plant or the type of exhaust systems that were set up. He admitted that the only treatment Claimant had for his respiratory condition included a trip to Cox urgent care and a few visits to a family doctor. Further, Dr. Koprivica admitted that Claimant had a normal exam on the date that Dr. Koprivica saw him. Dr. Koprivica said that without Claimant’s history, he would not have even known there was anything wrong with Claimant. Finally, Dr. Koprivica said that a normal person when they take a deep breath, if they have no obstruction, can blow out at least 80 percent of their lung volume. In Claimant’s case, “he did 84 percent, so that’s normal.” (Exhibit W, p. 31).

Dr. Parmet – Employer/Insurer’s Expert

Dr. Parmet is board certified in Occupational Medicine and Aerospace Medicine. His resume also indicates some degree of expertise in pulmonology. Dr. Parmet found nothing in Claimant’s medical records that demonstrate abnormal pulmonary function studies or flow measurement. All pulmonary functions appeared normal. Dr. Parmet indicated that since Claimant is no longer exposed at Webco, but continues to report intermittent symptoms, these cannot be attributable to his employment. He opined that it was Claimant’s own statements that there is any connection between his symptoms and his workplace, and that this was insufficient to make a determination that the workplace was a direct proximate and prevailing factor in the development of any illness. Dr. Parmet concluded that Claimant “may have a degree of airway hypersensitivity, but the only proven sensitivities he has are to common environmental antigens and are not demonstrated to be workplace-related.” (Exhibit 1).

Dr. Parmet made this conclusion after reviewing laboratory test results showing that Claimant had positive antipbodies for Timothy grass, American Elm, White Oak, Farinae mite, Ragweek, Thistle, Aspergillus fumignatus mold, and cat dander. Although Dr. Parmet initially said in his first report, prior to obtaining medical records, that historically Claimant had asthma, he later modified that opinion. Dr. Parmet said that in the absence of objective tests demonstrating any abnormalities from pain or other allergens in the workplace, he was unable to conclude that Claimant actually suffered from asthma. Dr. Parmet said, "He may have a degree of airway hypersensitivity, but the only proven sensitivities he has are to common environmental antigens and are not demonstrated to be workplace-related." (Exhibit 2).

I find Dr. Parmet's opinion more credible and persuasive than that of Dr. Koprivica.

FINDINGS AND CONCLUSIONS

Exhibit Z Not Admissible

At the close of his case, Claimant offered Exhibit Z, which is a copy of the Morbidity and Mortality Weekly Report, published June 25, 1999, by the Centers for Disease Control (CDC). The July 25, 1999 issue is dedicated to a "Surveillance of Work-Related Asthma in Selected U.S. States Using Surveillance Guidelines for States Health Departments—California, Massachusetts, Michigan and New Jersey, 1993-1995 and State Laws on Tobacco Control – United States, 1998." Even though Missouri was not included in the surveillance summary, it is apparent that Claimant seeks to have the document admitted for purposes of drawing a causal link between Claimant's workplace and his respiratory condition.

Exhibit Z has questionable relevance since it is a study published more than a decade ago and relates to only a handful of states, not including Missouri. But Employer's objection was it had not been provided with a copy of Exhibit Z prior to hearing. Moreover, Employer contends the document is hearsay and no foundation was laid to properly identify and authenticate the document. This Administrative Law Judge allowed the parties to address the admissibility in their briefs. Having considered the arguments of the parties and reviewed relevant statutory and case decisions, I exclude Exhibit Z for the following reasons:

The Missouri Administrative Procedures Act (MAPA), § 536.070(6) RSMo 2000, provides two methods for taking official or administrative notice in a contested case:

Agencies shall take official notice of all matters of which the courts take judicial notice. They may also take official notice of technical or scientific facts, not judicially cognizable, within their competence, if they notify the parties, either during a hearing or in writing before a hearing or before findings are made after hearing, of the facts of which they propose to take such notice and give the parties reasonable opportunity to contest such facts or otherwise show that it would not be proper for the agency to take such notice of them.

But, as the Missouri Supreme Court expressed in *Stegeman v. St. Francis Xavier Parish*, 611 S.W.2d 204 (Mo. banc 1981), overruled on other grounds, *Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220 (Mo. banc 2003), it is not appropriate for an adjudicatory body in a workers' compensation proceeding, which operates with parties before it in adversarial positions, to take official notice of facts not judicially cognizable, irrespective of the alternative procedure set forth in § 536.070(6). As the Court explained,

This would be too much in the nature of the Commission's leaving its neutral position and helping one side or the other with evidence. We believe the Commission and its referees are limited to ascertaining the facts from the record presented by the parties and applying the workmen's compensation law to the facts. This, of course, does not mean the Commission cannot employ regular judicial notice when it is proper under the rules of evidence to do so.

611 S.W.2d at 209.

As the above case dictates, I may not take official notice of Exhibit Z unless a Missouri court could take judicial notice of that same document. Chapter 490 RSMo, sets forth various categories of documents or information that may be admitted by judicial notice. For instance, § 490.080 RSMo 2000, provides that “[e]very court of this state shall take judicial notice of the common law and statutes of every state, territory and other jurisdiction of the United States.” Similarly, §490.700 RSMo 200, provides that a court shall take judicial notice of the population

of all cities of this state based on the last census. I find nothing in Chapter 490 RSMo, however, that would allow me to take administrative notice of the publication marked Exhibit Z.

As Employer appropriately pointed out, Exhibit Z contains no original seal, no certification, no attestation, or any affidavit of a custodian. Absent such accoutrement, the document also is not admissible either as a business record or as an official governmental record, pursuant to Chapter 490 RSMo. Claimant's Exhibit Z does not qualify for admission. The document is hearsay and Employer's objection is sustained.

Burden of Proof

Claimant has the burden to prove all essential elements of his claim, including a causal connection between the injury and the job. *Royal v. Advantica Rest. Grp., Inc.*, 194 S.W.3d 371, 376 (Mo. App. W.D. 2006). He also must prove the nature and extent of any disability by a reasonable degree of certainty. *Downing v. Willamette Industries, Inc.*, 895 S.W.2d 650, 655 (Mo. App. W.D. 1995).

Claimant alleges that he suffers from occupational asthma or reactive airways disease. But Claimant has absolutely no objective symptoms of the disease. Dr. Koprivica admitted that without Claimant's subjective history, he would not have thought anything was wrong with Claimant. He had a perfectly normal examination. While Claimant attributes episodes of his chest tightness and breathing difficulties to the paint at work, he admits, and his medical records verify, that he had suffered from pre-existing seasonal allergies and pre-existing chest tightness. There were tests performed that demonstrated Claimant's sensitivity to common allergens such as grasses, some trees, a common mold, and cat dander. No objective testing was performed to determine any sensitivity to paint fumes or other workplace allergens. Based on the record as a whole, I conclude that Claimant has failed to prove that his symptoms were work-related.

Even *if* I were to find that Claimant suffered a work-related sensitivity to paint vapors, the overwhelming evidence is that Claimant only has intermittent symptoms. He has had only minimal treatment since April 2007, and none after 2008. Given that his pulmonary tests were normal, I find no permanent disability.

Since I find that Claimant's condition is not compensable, I do not address any other issues related to Employer.

No Second Injury Fund Liability

In light of my conclusion that Claimant failed to prove a work-related condition, and in any event, suffered no permanent disability, I necessarily conclude that the Second Injury Fund has no liability.

Date: December 13, 2010

Made by: /s/ Victorine R. Mahon
Victorine R. Mahon
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

/s/ Naomi Pearson
Naomi Pearson
Division of Workers' Compensation