

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

Injury No.: 98-127767

Employee: Christain Manion  
Employer: Fahr's Greenhouses  
Insurer: Florists Mutual Insurance Co. a/k/a Hortica  
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 November 10, 2009, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Suzette Carlisle, issued November 10, 2009, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 7<sup>th</sup> day of April 2010.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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

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

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

Attest:

\_\_\_\_\_  
Secretary

## AWARD

Employee: Christain Manion<sup>1</sup> Injury No.: 98-127767  
Dependents: N/A Before the  
Employer: Fahr's Greenhouses **Division of Workers'**  
**Compensation**  
Additional Party: Second Injury Fund Department of Labor and Industrial  
Relations of Missouri  
Insurer: Florists Mutual Insurance Co. (aka Hortica)<sup>2</sup> Jefferson City, Missouri  
Hearing Date: August 12, 2009 Checked by: SC

### 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 date of onset is September 11, 1998
5. State location where accident occurred or occupational disease was contracted: St. Louis County
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes
7. Did employer receive proper notice? Yes
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:  
Claimant alleged she developed asthma and chemical sensitivity from exposure to chemicals and latex in the work place.
12. Did accident or occupational disease cause death? No
13. Part(s) of body injured by accident or occupational disease: N/A
14. Nature and extent of any permanent disability: N/A
15. Compensation paid to-date for temporary disability: \$5,999.29
16. Value necessary medical aid paid to date by employer/insurer? \$1,959.74

---

<sup>1</sup> During the hearing, Claimant testified that her name is spelled incorrectly with the DWC. It should be spelled "Christain" not "Christian" as stated in the DWC file

<sup>2</sup> Attorney Campbell provided updated information about the Insurer during the hearing.

Employee: Christain Manion

Injury No.:98-127767

- 17. Value necessary medical aid not furnished by employer/insurer? N/A
- 18. Employee's average weekly wages: \$244.77
- 19. Weekly compensation rate: \$163.18
- 20. Method wages computation: Stipulated

**COMPENSATION PAYABLE**

21. Amount of compensation payable:

22. Second Injury Fund liability: None

TOTAL:

NONE

23. Future requirements awarded: None

Said payments to begin 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 N/A of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant: Mark Akers.

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

Employee:	Christain Manion	Injury No.:	98-127767
Dependents:	N/A	Before the	
Employer:	Fahr Greenhouses, Inc.	<b>Division of Workers'</b>	
		<b>Compensation</b>	
Additional Party:	Second Injury Fund	Department of Labor and Industrial	
		Relations of Missouri	
		Jefferson City, Missouri	
Insurer:	Forrest Mutual Insurance Co aka Hortica	checked by:	SC

**STATEMENT OF THE CASE**

Christian Manion (Claimant) requested a hearing for a final award pursuant to §287.450.<sup>3</sup> Claimant seeks permanent total disability (PTD) benefits. The hearing was held at the Missouri Division of Workers' Compensation (DWC), St. Louis Office on August 12, 2009. Claimant appeared in person and by counsel, Attorney Mark Akers. Attorney Jonathan L. Downard, Claimant's co-counsel, did not appear. Attorney Maria Campbell represented Fahr Greenhouses, Inc. (Employer) and Forrest Mutual Insurance Company (aka Hortica) (Insurer).<sup>4</sup> Attorney Michael Finneran represented the Treasurer, Custodian of the Second Injury Fund (SIF). The record closed after presentation of the evidence.

Claimant and Employer's Joint Exhibits A1-E5 are admitted. Claimant's Exhibits F, G, H, I and J, K, L and M are admitted.<sup>5</sup> Employer's Exhibits 6-7 are admitted. SIF offered no exhibits. Any notations contained in the records were present when admitted. Any objections contained in the depositions but not addressed in the award are overruled.<sup>6</sup>

**SUMMARY OF DECISION**

Based on the credible testimony of Dr. Belz, medical records, reports, Claimant's demeanor during the hearing, and less than credible testimony by the Claimant and Dr. Feinberg, I find Claimant

<sup>3</sup> All statutory references are to the 1993 Revised Statutes of Missouri, unless otherwise stated.

<sup>4</sup> In this award, references to the Employer also include the Insurer.

<sup>5</sup> Employer objected to Exhibit K based on hearsay. Claimant authenticated the out of pocket expenses listed in Exhibit K. The objection is overruled. Employer and the SIF objected to Exhibits G, L, and M based on hearsay. Claimant noted Exhibits G, L, and M were obtained by Employer's attorney with authentication, and later removed by the attorney. All three exhibits were written by Dr. Berdy, the treating physician, authorized by the Employer and Insurer. Exhibit L was written in response to questions raised by the Employer, who is a party to the case. Exhibit M was a follow up to Dr. Pettenger, the physician that referred Claimant to Dr. Berdy. These letters were written to provide medical information, not for the truth of the matter asserted. Similarly, Exhibit G, written to Claimant's attorney Jonathan L. Downard, provided information about Claimant's medical condition, not for the truth of the matter asserted. Further, the letter contained diagnostic and treatment information, not easily obtained from the hand written documents in evidence. It should be noted that the outcome would not have changed if Exhibits G, K, L and M were omitted. The objection is overruled.

<sup>6</sup> Employer's objections to Dr. Feinberg's statements about the opinions of Dr. Berdy and Dr. Sultan are sustained. A testifying expert cannot be a mere conduit for a non-testifying expert. See *Bruflat v. Mister Guy, Inc.*, 933 S.W.2d 829 (Mo. App. 1996).

did not meet her burden to prove she sustained an occupational disease that arose out of and in the course of her employment.

The parties stipulate that on or about September 11, 1998,

1. Claimant was employed by Employer, in St. Louis County;
2. Employer and Claimant operated under the Missouri Workers' Compensation Law;
3. Insurer fully insured Employer's liability;
4. Employer had notice of the injury;
5. A Claim for Compensation was timely filed;
6. Claimant's average weekly wage was \$244.77;
7. The rates for permanent partial disability (PPD) and permanent total disability (PTD) are \$163.18;
8. Employer paid temporary total disability (TTD) totaling \$5,999.29;
9. Employer paid medical benefits totaling \$1,959.74; and
10. Claimant achieved maximum medical improvement (MMI) on April 16, 1999

The parties identified the following issues for disposition:

1. Did Claimant sustain an occupational disease?
2. If so, did it arise out of and in the course of Claimant's employment?
3. Was the occupational disease medically causally related to the work Claimant performed for Employer?
4. Is Employer liable for past medical expenses totaling \$5,284.50?
5. What is the nature and extent of Employer's liability for PPD or PTD benefits?
6. What is the nature and extent of the SIF's liability for PPD or PTD benefits?

### **FINDINGS OF FACT**

All evidence was reviewed but only evidence discussed below is considered to establish the relevant facts based on competent and substantial evidence contained in the record:

1. Claimant earned an Associates' Degree in landscape design from East Central College in 1995. She worked for Employer as a grower from January 2, 1996 to October 5, 1998. Claimant worked Monday through Friday, and occasionally a half day on Saturday.
2. The first 3 hours of each work day, Claimant watered plants in 20 greenhouses. An hour each day, Claimant used the computer to process requests for cuttings from other nurseries. She assigned personnel to cut plants, inventoried stock, processed orders, and monitored workers who filled orders. She wore boots with a rubber bottom, but no protective gear was required.
3. In 1997, Claimant began using chemicals to spray plants to control bugs and disease. She sprayed in the evening after work hours. Before she began spraying plants, Claimant reviewed literature with her supervisor and saw video tapes about the proper use of chemicals, protective clothing, and use of the respirator.

4. Claimant sprayed an average of two hours per day, three nights a week during the week. Spraying took place from April 1<sup>st</sup> to December 1<sup>st</sup>.
5. While mixing and spraying chemicals, Claimant wore a disposable jumpsuit that zipped to neck level in the front, rubber boots inside the suit, rubber gloves placed over the jumpsuit sleeves that reached the elbow, a mask, and a half face respirator with two cartridges. Goggles were used when spraying overhead baskets. Claimant's supervisor made sure the mask was flat against her face. The respirator was a good fit and sealed. Claimant wore no head covering.
6. A coworker filled the container with water and Claimant added an ounce of powder or liquid chemicals. Three types of sprayers were used. Claimant filled a 2 gallon container that she used to spray one greenhouse. A coworker pushed the medium size container was on wheels while Claimant sprayed. This method was used 90% of the time. A coworker used a tractor to spray large jobs. Plants were sprayed periodically as needed.
7. After the plants were sprayed, Claimant rinsed the mixing and measuring containers and small sprayer three times. The gloves were rinsed before the mask was removed. Claimant proceeded to the chemical room, put the gloves back on, removed the boots and hung the jumpsuit to drip dry. The mask was placed in a personal bag in the office. Everything else remained in storage. The gloves were rinsed three times and hung up to dry. The boots were not washed.
8. She did not spill chemicals before, during or after use. Claimant had an acute sense of smell, but never smelled an odor when she mixed, measured, sprayed, and cleaned.
9. On September 11, 1998, Claimant sprayed poinsettias but does not know the name of the chemical she used. Claimant finished spraying, put away equipment, and locked up the chemical building. While outside on her way to the office, she developed shortness of breath, nausea, vomiting, and a severe headache. The symptoms continued when she arrived home.
10. The next day symptoms continued and Claimant informed her supervisor. For several days, symptoms returned when she went to work and decreased when she stayed home. Symptoms include nausea, headaches, and respiratory problems. Respiratory problems returned when Claimant walked into the greenhouse.
11. In October 1998, Dr. Berdy, an allergist, performed a test for latex and prescribed asthma medication. Treatment stopped in September 1999.
12. In 2000, Claimant treated with Drs. Wedner and Sultan. She has treated with Dr. Sultan for the past seven years. Claimant orders mail order supplements and vitamins through Dr. Sultan. Supplements and vitamins are free from sugar, yeast, wheat, additives, and preservatives.
13. Claimant testified she has the following complaints even in a chemical free environment: chronic fatigue, fibromyalgia, and headaches. Fatigue prevents Claimant from driving the 106 mile round trip to Dr. Sultan's office. She can no longer install landscape beds the way she did in the past. Exhaust fumes cause respiratory problems. When Claimant is exposed to chemicals, she can no longer work, shop, and attend family functions. She cannot wash cars or mow grass. She cannot purchase a new car or computer. Claimant smells the car for tobacco or out-gassing from the carpet or plastic.

14. Claimant removed plastic containers and latex backed rugs from her home. When exposed to chemicals, Claimant takes a detox cocktail and symptoms improve within 6 days. She purchases chemical free furnace filters, organic cotton pillows, bedspreads, draperies, and chemical free cleaning products, hand lotions, shampoos, and soap.
15. Claimant seeks reimbursement for medical expenses contained in Exhibit K. The last bill is for services rendered on July 9, 2001. Claimant treated with Drs. Berdy, Berson, Wedner and Sultan. Currently, she sees Dr. Sultan twice a year for multiple complaints.

***Preexisting medical conditions***

16. In 1978, Claimant gave Eureka Medical a history of, among other things, sinus problems, fatigue, nausea, diarrhea, headaches, and bronchitis. Between 1980 and September 1998, Claimant routinely received medical treatment for bronchitis, sinusitis, and other upper respiratory conditions.
17. Claimant was diagnosed with exercise induced asthma when she ran track in high school. However, she took no medication for the condition prior to 1998. She had no problem performing work duties, did not need assistance, and did not miss a significant amount of time from work for respiratory problems, bronchitis or headaches.

***Expert Medical Opinions***

18. **Susan Berdy, M.D.**, initially treated Claimant on October 22, 1998 for a possible latex allergy at the request of Claimant's physician and Employer. Complaints included nasal and chest symptoms that became worse around poinsettias and latex. Claimant gave a history of asthma as a teenager, but no adult onset until she worked for Employer.<sup>7</sup>
19. The initial pulmonary function test (PFT) revealed severe airway obstruction. RAST test was negative for latex allergy. A chest x-ray was negative for lung infiltrates. On November 10, 1998, Dr. Berdy diagnosed a possible latex allergy and asthma, triggered by irritants and allergy.<sup>8</sup> Dr. Berdy prescribed asthma medication and recommended Claimant avoid latex.
20. In April 1999, Dr. Berdy diagnosed chronic severe asthma based on the severe obstruction of Claimant's pulmonary function, her long history of asthma, and a family history of asthma. Dr. Berdy recommended a second RAST test, which if negative, would indicate Claimant had no latex allergy.<sup>9</sup> Dr. Berdy opined Claimant had reached maximum medical improvement but expected future asthma problems due to obstruction of the PFT.
21. On June 1, 1999, while still treating with Dr. Berdy, Claimant sought treatment with **Douglas Berson, M.D.** for asthma and latex sensitivity.<sup>10</sup> Claimant reported exercise induced asthma in

---

<sup>7</sup> Dr. Berdy's medical records are hand written and very difficult to read. Therefore, information is supplemented from Exhibits G, L, and M.

<sup>8</sup> Dr. Berdy opined poinsettias are in the same family as the hevae brasiliensis tree, which is the source of latex.

<sup>9</sup> Dr. Berdy noted that skin testing is more sensitive to latex than RAST. However, the FDA had not approved skin testing in the United States.

<sup>10</sup> Some of Dr. Berson's medical records were hand written and difficult to read.

high school, resolved, an itching rash when she used gloves in June 1997, a “marked reaction” to her skin in September 1997 when touched with gloves during a GYN examination, recurrent sinusitis while using a latex mask to spray pesticides in August 1998, and a severe reaction to poinsettias.

22. Claimant reported chest tightness and choking while at a restaurant, before she learned a poinsettia was present. She had a reaction in the tire department at Sears. Other triggers include car and paint fumes, weather, exercise, latex, tobacco and wood smoke, perfume, household cleaners, insect sprays and dust. Her last severe reaction was February 1999. Claimant’s mother, grandparent, and sister have asthma. Claimant’s mother, sister, and son have hay fever and migraine headaches.
23. Claimant lives on a ranch with carpeted floors and has one cat that lives outdoors.
24. A June 1999 PFT revealed moderate obstruction, and “significant inspiratory cut-off consistent with a fixed upper airway obstruction.” A concentrated prick test and latex patch test on Claimant’s back were both negative for latex allergy. On February 23, 2000, Dr. Berson offered to test Claimant for poinsettia allergy. He wrote: “she would like us to test her. Pt still believes she has a latex allergy & wants workman’s compensation from her employer. She will be seeking another opinion from Dr. Wedner. . . .”
25. In July, 1999, PFTs were normal. A methacholine challenge was positive and produced chest tightness and coughing, which reversed with use of a bronchodilator. Rhinolaryngoscopy revealed granular tissue in the adenoids with secretions around the vocal cords.
26. In September 1999, Dr. Berdy revised her diagnosis after PFT results were normal. Claimant remained primarily home-bound, but reported feeling good, “like she did before working at the greenhouse.” Dr. Berdy opined Claimant’s return to normal respiratory function decreased the possibility of permanent lung damage.
27. On January 7, 2000, Dr. Berdy conceded that poinsettias can cross react with latex, but, concluded Claimant did not have a latex allergy after the second RAST test was negative for latex allergy. Dr. Berdy recommended Claimant avoid working in greenhouses that contain poinsettias.
28. On March 23, 2000, **H. James Wedner, M.D.**, examined Claimant for latex sensitivity. Claimant informed Dr. Wedner that she needed a positive diagnosis by September 2000 in order to file a workers’ compensation claim.
29. She reported no history of allergies or asthma. Claimant told Dr. Wedner she developed a rash on her hands and arms after she wore latex gloves to cut poinsettias seven months after she was hired by Employer. Non-latex gloves did not help. In August 1998, Claimant returned to the greenhouse and developed chest tightness, a cough and shortness of breath. She has not returned to the greenhouse.
30. Complaints include hoarseness, and sinus and chest congestion within two hours after contact with latex, rubber, electric cords, and carpet, chest tightness with exercise, walking to the

driveway or yard work. Exposure to store balloons can produce symptoms for up to three days. Claimant reported postnasal drip, coughing and nausea since 1998.

31. On April 13, 2000, a skin test was negative for latex allergy, and Dr. Wednar concluded Claimant had no latex sensitivity. He agreed with Drs. Berson and Berdy that she has atopic asthma and allergic rhinitis. Claimant's last appointment was May 11, 2000. She was scheduled for reevaluation but no additional records are in evidence.
32. **Tipin Sultan, M.D.**, with the Environmental Health and Allergy Center of St. Louis, began treating Claimant on June 15, 2000 for allergic rhinitis, bronchial asthma, chronic sinusitis, food allergies, and chemical sensitivity. Dr. Sultan reviewed a list of 25 chemicals Claimant used in the greenhouse. He recommended vitamins and supplements.
33. Tests results demonstrated a reaction to formaldehyde, and colognes. Dr. Sultan advised Claimant to avoid chemical exposures, man-made chemicals, maintain a clean environment, and prescribed medication to detox chemicals. Testing for food allergy showed sensitivity to milk, sugar, yeast, wheat and soybeans.
34. Dr. Sultan recommended that Claimant not return to work at a greenhouse. He continues to treat Claimant for multiple medical conditions.
35. **Barry I. Feinberg, M.D.**, an anesthesiologist, is board certified in pain management. He interviewed Claimant at her attorney's request for an Independent Medical Evaluation on October 23, 2003. However, Claimant refused to allow Dr. Feinberg to physically examine her because he wore cologne.
36. Dr. Feinberg diagnosed reactive airway disease. He concluded Claimant had a predisposition to environmental and chemical irritants. However, he found Claimant's chemical exposure in September 1998 was a substantial factor in causing her current sensitivity multiple chemicals. He pointed to Claimant's poor PFT result in 10/98 and the need for treatment.
37. Based on Claimant's history and medical records, Dr. Feinberg found Claimant was totally and permanently disabled because of chemical sensitivities. Dr. Feinberg opined Claimant could work mainly at home where she had minimal exposure to people, environmental agents, and irritants. He noted Claimant was practically house-bound in an effort to avoid irritants, and suffered from fibromyalgia, caused by chemical sensitivity.
38. Dr. Feinberg rated 50% PPD of the body as a whole due to multiple chemical sensitivities caused by the September 1998 exposure, and 50% PPD for preexisting sensitivities. He opined that Claimant's supplements and vitamins are mainly for dietary problems and made no medical recommendations.
39. **Norbert Belz, M.D.**, is board certified in preventive medicine with a subspecialty in environmental and occupational health. He interviewed Claimant and physically examined her twice on October 17, 2005. While taking Claimant's history, she informed Dr. Belz she was having an attack. Dr. Belz immediately performed a respiratory examination, which was normal. Later, a complete physical exam was also normal.

40. Dr. Belz reviewed a list of chemicals compiled by Claimant and Employer, of the chemicals she used at work. He concluded Claimant's exposure to pesticides or latex at work did not cause, aggravate or accelerate her allergies, hay fever, asthma or any related problem. He explained the latex was in the headband, not the breathing area of the mask. Furthermore, a latex allergy would appear as a rash where the headband was located. Drs. Berdy, Berson, and Wedner tested Claimant five times for latex and all five tests were negative. Dr. Belz opined the same test results applied to poinsettias, which are cross-reactive to latex.
41. Dr. Belz opined multiple chemical sensitivity is not a recognized medical diagnosis and could not be verified by the medical/scientific community. Moreover, Claimant received treatment under the guise of this condition for numerous non-occupational diagnoses, i.e.; hypothyroidism, high blood pressure, menopause, and arthritis.
42. Claimant reported nausea, vomiting and headaches after she put her equipment away, locked up, and walked to the next building. Dr. Belz expected symptoms to occur at the time of highest exposure, not after she left the building. Also, to produce vomiting, nausea, and headaches, Dr. Belz opined the product had to be ingested.
43. Claimant reportedly inhaled the toxicant, while wearing proper clothing. There was no odor or spill, and the dose was at the lowest level because she was outside.
44. Dr. Belz diagnosed non-occupational atopy and asthma (hay fever and allergy induced asthma). The condition runs in families, and Claimant's mother, sister and niece have been diagnosed.
45. Occupational asthma becomes worse immediately with exposure. However, allergy induced asthma produces an immediate attack, and possibly a second attack up to eight hours later.
46. Claimant had asthma from high school and received asthma treatment as an adult before September 1998 from Drs. Pittenger and Sattman. Dr. Belz concluded Claimant exhibited signs of hay fever and asthma before September 1998, during numerous doctors' visits. Hay fever signs include asthma, shortness of breath, wheezing, and bronchitis. Asthma signs include gastroesophageal reflux disease, and sinusitis. Dr. Belz noted two asthma attacks in July 1998 while Claimant was off work.
47. Also, Dr. Belz noted Claimant last worked October 5, 1998 and received a flu shot on October 12, 1998. Claimant would not have received a flu shot if she was ill. On October 20, 1998, Claimant received a well woman examination with no reported symptoms. However, on October 22, 1998, Claimant informed Dr. Berdy she was having an acute asthma attack. Dr. Belz concluded the asthma worsened on October 22, 1998 and returned to normal months later, as evidenced by her normal PFT in September 1999. Furthermore, this change is typical for asthma and hay fever, which are episodic conditions.
48. Dr. Belz agreed with Dr. Feinberg that Claimant did not meet 11 of 18 criteria needed to establish fibromyalgia. In addition, he found no connection between Claimant's greenhouse work and fibromyalgia.

### **RULINGS OF LAW**

After giving careful consideration to the entire record and based upon the above testimony, Claimant's demeanor, competent and substantial evidence contained in the record, and the applicable law of the State of Missouri, I find Claimant did not meet her burden to show she sustained an occupational disease that arose out of and in the course of her employment for the reasons stated below:

***Claimant did not sustain an occupational disease that arose out of and in the course of her employment***

Claimant asserts her work activities were a substantial factor that caused multiple chemical sensitivities and a latex allergy, due to chemical exposure while spraying plants on or about September 11, 1998. Employer and the SIF contend Claimant did not sustain an occupational disease that arose out of and in the course of her employment.

Claimant bears the burden of proving a direct causal relationship between the conditions of employment and the occupational disease. *Jacobs v. City of Jefferson*, 991 S.W.2d 693, 696 (Mo.App. 1999) (*Overruled on other grounds by Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220 (Mo. 2003)). Generally, a claimant's medical expert in an occupational disease case must establish within a "reasonable probability" that the disease was caused by conditions in the work place. *Sheehan v. Springfield Seed & Floral, Inc.*, 733 S.W.2d 795, 797 (Mo. App. 1987) (citations omitted). The mere "possibility" that other factors could have contributed to cause the illness does not necessarily defeat a claim based on occupational disease. *Id.*

Section 287.067 RSMo (1993) defines occupational disease as:

1. An identifiable disease arising with or without human fault out of and in the course of employment. Ordinary diseases of life [which] the general public is exposed to outside of employment shall not be compensable, except where the diseases follow as an incident of an occupational disease as defined in this section. The disease need not have been foreseen or expected but after its contraction it must appear to have an origin in a risk connected with the employment and have flowed from that source as a rational consequence.
2. An occupational disease is compensable only if it is clearly work related and meets the requirements of 287.020.2-3. An injury is not compensable merely because work was a triggering or precipitating factor.

Section 287.020. RSMo (1993) states:

2. An injury is clearly work related if work was a substantial factor in the cause of the resulting medical condition or disability.
3. (1) The injury must arise out of and in the course of employment. The injury must be incidental to and not independent of the relation of employer and employee. Ordinary, gradual deterioration or progressive degeneration of the body caused by aging shall not be compensable, except where the deterioration or degeneration follows as an incident of employment.  
  
(2) An injury shall be deemed to arise out of and in the course of employment only if:

- (a) It is reasonably apparent, upon consideration of all the circumstances, that the employment is a substantial factor in causing the injury; and
- (b) It can be seen to have followed as a natural incident of the work; and
- (c) It can be fairly traced to the employment as a proximate cause; and
- (d) It does not come from a hazard or risk unrelated to the employment to which workers would have been equally exposed outside of and unrelated to employment in normal nonemployment life. . . .

Where the opinions of medical experts are in conflict, the fact finder determines whose opinion is the most credible. *Hawkins v. Emerson Electric Co.*, 676 S.W.2d 872, 877 (Mo.App. 1984). Where there are conflicting medical opinions, the fact finder may reject all or part of one party's expert testimony which it does not consider credible and accept as true the contrary testimony given by the other litigant's expert. *George v. Shop'N Save Warehouse Foods Inc.*, 855 S.W.2d 460, 462 (Mo.App. 1993) (citations omitted)

I find Dr. Belz is more credible than Dr. Feinberg. Dr. Belz is board certified in environmental and occupational health. Dr. Feinberg has no training in toxicology exposure, allergies, asthma or related conditions. Dr. Belz interviewed Claimant twice as long as Dr. Feinberg and, physically examined her twice. In contrast, Claimant refused to let Dr. Feinberg examine her because he wore cologne. However, during the hour long interview with Dr. Feinberg, Claimant sat 4 feet away, and spoke calmly with no shortness of breath, wheezing or respiratory distress, despite the cologne.

I find Dr. Belz's opinion is credible that Claimant's exposure to pesticides and latex at work did not cause, aggravate, accelerate or precipitate any medical conditions she may have. Unlike Dr. Feinberg, Dr. Belz considered Claimant's entire medical record. The record contains the following diagnoses before 1998: allergic reactions to her skin, eyes, upper respiratory tract, asthma, esophageal reflux disease, sinusitis, neurodermatitis, gastrointestinal symptoms, headaches, nausea, diarrhea, allergic conjunctivitis, fungal infections, herpes simplex virus, and hypothyroidism.

Dr. Belz opined Claimant was initially diagnosed with asthma in high school and the condition was aggravated many times by infection prior to September 1998. Also, Claimant has a strong family history of atopy and asthma. Given this history, he concluded the asthma was not caused by or aggravated by Claimant's work activities.

I find Dr. Feinberg's opinion is not credible that the September 1998 incident was a substantial factor in the development of Claimant's chemical sensitivities. Dr. Feinberg discounted Claimant's long history of allergies because Claimant said her symptoms increased after September 1998. He incorrectly believed the October 22, 1998 PFT results confirmed his conclusion. But, on October 20, 1999, Claimant received a flu shot and her only complaint was related to menopause. Dr. Belz concluded Claimant would not have received a flu shot if she had been ill. Therefore, she must have had a flare-up on October 22<sup>nd</sup>. By May 1999, Claimant's PFT results were normal, which is consistent with Dr. Belz's opinion that asthma is episodic.

Dr. Belz reviewed a list of chemicals used from Claimant and Employer. However, the record is not clear whether Dr. Feinberg reviewed the lists. Nevertheless, Dr. Belz rejected the chemical sensitivity diagnosis, because it is not generally accepted by the scientific and medical communities.

Here, Claimant allegedly inhaled the toxins, which should produce an immediate reaction at the time of exposure. But Claimant's symptoms did not begin until after she put away equipment, locked up and left the building. Furthermore, she smelled no odor, and had no spills during mixing, spraying or cleanup. Claimant received training before she used the chemicals, and wore protective gear, including a jumpsuit, boots, gloves, mask and a respirator.

Additionally, Dr. Belz concluded Claimant would have to ingest the chemicals to experience nausea, vomiting and headaches.

Dr. Feinberg relied on Claimant's history that she has become a recluse in order to avoid irritants that cause headaches, congestion, diarrhea, fatigue, respiratory dysfunction and joint pain. However, to make Dr. Feinberg's appointment, Claimant parked near a major highway and transit system, walked into the building, through the lobby with an open restaurant, filled out paper work and sat in a waiting room with other patients and staff, without signs of distress.

Similarly, Claimant traveled a distance by highway to be examined by Dr. Belz in Springfield, Missouri. During the interview, she reportedly had an attack, but her pulse rate and respirations remained normal, without wheezing or abnormal breath sounds during two examinations. In 2005, Claimant fished 10-12 times in a john-boat, using live worms to catch and release fish. She sews quilts, gardens, and walks to the barn to feed her cat.

I find credible Dr. Belz's opinion that Claimant's asthma was not caused or aggravated by latex exposure. Drs. Belz, Berdy, Berson and Wedner agree Claimant does not have a latex allergy. Consequently, Dr. Belz concluded Claimant does not have a poinsettia allergy. Dr. Belz explained the latex was in the headband, not the breathing area. Dr. Belz noted if Claimant had a latex allergy, it would appear as a rash where the headband is located. I find Claimant did not sustain a latex allergy.

I find Claimant is not credible. Dr. Belz noted "multiple discrepancies" between the history she provided him and prior medical records. Claimant insists she is allergic to latex despite 5 tests by 3 doctors to the contrary. Also, no rash was identified in the area of the headband where latex was located. She told Dr. Wadner she needed a positive latex diagnosis by September 2000 to file a workers' compensation claim. Dr. Berson's office note regarding Claimant states: "...I also referred back to the 9/20/99 phone call I had with her inviting her to bring poinsettia in if she would like us to test her. Pt still believes she has a latex allergy & wants workerman's compensation from her employer."

At the hearing, Claimant testified that Dr. Berdy's office would not treat her after April 1999. However, Dr. Berdy examined Claimant in September 1999 and ordered a repeat latex test. I observed Claimant sit through an hour of questioning in the morning and another hour in the afternoon without any apparent discomfort. In the morning, the hearing room contained four attorneys, two law students and a court reporter. The room was small and carpeted. Claimant reviewed papers she brought to the hearing and answered questions without any apparent distress.

Additionally, Drs. Belz and Feinberg agree Claimant does not have fibromyalgia.

Based on credible testimony by Dr. Belz, medical records, reports, Claimant's demeanor during the hearing, and less than credible testimony by Claimant and Dr. Feinberg, I find Claimant's use of

chemicals and latex did not cause or aggravate her preexisting asthma or any other condition. I find Claimant did not meet her burden to show she sustained an occupational disease that arose out of and in the course of her employment. I find Claimant's injury is independent of the relationship she had with Employer. I find Claimant's employment is not a substantial factor that caused the injury. I find Claimant's injury is not a natural incident of her work, and cannot be fairly traced to employment as the proximate cause. I find the injury comes from a hazard or risk unrelated to employment which workers would be equally exposed to outside of employment.

Having found Claimant did not sustain an occupational disease that arose out of and in the course of employment, all other issues are moot.

**CONCLUSION**

Claimant did not sustain an occupational disease that arose out of and in the course of employment. The Second Injury Fund case is denied.

Date: \_\_\_\_\_

Made by: \_\_\_\_\_

**Suzette Carlisle**  
*Administrative Law Judge*  
*Division of Workers' Compensation*

A true copy: Attest:

\_\_\_\_\_  
**Naomi Pearson**  
*Division of Workers' Compensation*