

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

Injury No.: 76-122097

Employee: Donald McGill

Employer: The Boeing Company  
(f/k/a McDonnell Douglas)

Insurer: Self-Insured

Date of Accident: Alleged June 1, 1976

Place and County of Accident: Alleged St. Louis City, Missouri

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations 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 July 29, 2004, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Karla Ogrodnik Boresi, issued July 29, 2004, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 3<sup>rd</sup> day of March 2006.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

NOT SITTING  
William F. Ringer, Chairman

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

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

Attest:

\_\_\_\_\_  
Secretary

**AWARD**

Employee: Donald McGill

Injury No.: 76-122097

Dependents: N/A Before the  
**Division of Workers'**  
Employer: The Boeing Co. (f/k/a McDonnell Douglas) **Compensation**  
Department of Labor and Industrial  
Additional Party: N/A Relations of Missouri  
Jefferson City, Missouri  
Insurer: Self  
Hearing Dates: 2/26/04, 3/9/04, 3/19/04, 3/24/04, Checked by: KOB  
3/26/04, 4/6/04, 4/13/04 & 4/28/04

### 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: N/A.
5. State location where accident occurred or occupational disease was contracted: N/A.
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes.
7. Did employer receive proper notice? See Award.
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? See Award.
10. Was employer insured by above insurer? Yes.
11. Describe work employee was doing and how accident occurred or occupational disease contracted: N/A.
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: \$0
16. Value necessary medical aid paid to date by employer/insurer? \$0
17. Value necessary medical aid not furnished by employer/insurer? \$0

Employee: Donald McGill Injury No.: 76-122097

18. Employee's average weekly wages: Maximum.
19. Weekly compensation rate: \$70.00 (TTD) / \$60.00 (PTD) / \$65.00 (PPD)
20. Method wages computation: By Agreement.

### COMPENSATION PAYABLE

21. Amount of compensation payable: \$ 0.00

22. Second Injury Fund liability: No

TOTAL: \$ 0.00

23. Future requirements awarded: None

## FINDINGS OF FACT and RULINGS OF LAW:

Employee: Donald McGill Injury No.: 76-122097  
Dependents: N/A Before the  
**Division of Workers'**  
Employer: The Boeing Co. (f/k/a McDonnell Douglas) **Compensation**  
Department of Labor and Industrial  
Additional Party: N/A Relations of Missouri  
Jefferson City, Missouri  
Insurer: Self  
Checked by: KOB

### PRELIMINARIES

The matter of Don McGill ("Claimant") verses McDonnell Douglas Corporation, now known as The Boeing Company ("Employer"), proceeded to hearing to determine if Workers' Compensation benefits are owed Claimant due to his alleged exposure to a toxic substance at work. Attorney Stephen Kaludis represented Claimant. Attorney George Floros represented Employer, who was self-insured for purposes of this case.

Claimant's case is based on events that occurred thirty years prior to hearing, during the early stages of Employer's F-15 aircraft program, and requires the analysis of many complex medical, scientific, engineering, and factual issues. Given the passage of time since the critical events, as well as the sophistication of the underlying issues, the parties agreed that the presentation of the case would take an extended period of time. In addition, the hearing was conducted with flexibility to allow both parties the full opportunity to present their respective cases, which they did over the course of eight days: February 26, March 9, March 19, March 24, March 26, April 6, April 13 and April 28, 2004. The original deadline for the filing of post-hearing briefs was extended by consent several times, such that the final due date for briefs was July 2, 2004.

The parties agreed that Claimant was an employee of Employer between 1972 and 1974, both parties are subject to the Missouri Workers' Compensation Act, and venue is proper in the City of St. Louis. The stipulated rates of compensation are: \$70.00 for temporary total disability; \$60.00 (for up to 300 weeks) for permanent total disability; and \$65.00 for permanent partial disability. The healing period is limited to 30 weeks. Finally, both sides agreed that Claimant last worked for Employer on July 30, 1977.

### ISSUES

The following issues were placed before the court for determination:

1. Does the statute of limitations bar Claimant's claim for benefits;
2. Did Claimant give proper notice of his work-related injury;
3. Was Claimant exposed to the chemical monomethylhydrazine at work;
4. If so, is Claimant's exposure the medical cause of various physical ailments suffered by Claimant over the years;
5. Is Claimant entitled to recover the costs of the medical care he has received in the past, and will receive in the future, to cure and relieve his various physical ailments;
6. Is Claimant entitled to recover temporary total disability benefits; and
7. What is the nature and extent of the permanent partial disability associated with Claimant's work-related exposure?

## SUMMARY OF THE EVIDENCE<sup>[1]</sup>

### I. CLAIMANT'S TESTIMONY.

Claimant is a fifty-nine year old man who began working for Employer in late 1963, shortly after he graduated from high school. During his employment, Claimant became a Grade I Mechanic, and had a range of different responsibilities, including sheet metal, painting, pyrotechnic, and mechanical work. He worked on F-4 production during the Vietnam War, and on the F-15 program in its development stages. He was laid off from January 15, 1971 to March 14, 1972, missed work following a car accident from late October to mid-November 1973, and had a disciplinary suspension from December 1973 to January 1974, but otherwise worked regularly until July 1977, when he stopped working for Employer. Thereafter, Claimant performed part-time jobs in painting and construction, formed his own small construction business, and, in 1986, went into a partnership to own and run a bowling alley, which lasted approximately eleven years. Claimant began to draw social security disability benefits in 1997. Currently, he is not working in any capacity.

Claimant testified that he had always been healthy, until the mid-1970's, when he developed stomach problems, pressure under his rib cage, belching, and redness of the eyes. He began seeing Dr. Carpio, his family physician, whose records are unavailable. In 1977, Claimant was hospitalized for gastrointestinal problems and diagnosed with irritable bowel syndrome. He developed petit mal seizures, and in 1977, he had his first of several grand mal seizures. He had an enlarged spleen, which was removed in 1988. Kidney, liver, gallbladder, esophagus, and pancreas problems ensued. Gastrointestinal and nervous system troubles continued, with muscle spasms and pain. He saw many doctors, had all numerous tests, and was on "probably a hundred different drugs" over the years. Although he had insurance coverage through his wife after he left Employer, Claimant still incurred considerable costs associated with co-pays and other uncovered expenses.

In late 1996, Claimant had a chance conversation at the bowling alley with Earl Filler, a former flight line inspector for Employer, about the jobs Claimant worked at McDonnell Douglas. During this exchange, Claimant mentioned that he "ran the MEPU<sup>[2]</sup> system check" on the F-15. Filler protested, saying he could not have run such a check because it was a flight line job that involved dangerous gas. The disagreement escalated, with Filler insisting Claimant could not have worked the MEPU, until Claimant "just dropped the subject" because he "didn't want to sit there and try to convince him of something that I did." Later that night, while reflecting on what Filler said about the MEPU system, Claimant said, "all of a sudden, everything just starts falling together for almost a twenty year period of time of my medical history." Thus convinced that he was exposed to a toxic substance at work that caused all his problems, Claimant filed a workers' compensation claim. Over the next several years, by way of repeated Freedom of Information Act requests, countless phone calls, and dogged determination, Claimant exhaustively researched monomethylhydrazine and the MEPU, accumulated the evidence he presented at hearing, and learned everything he now claims to know about the MEPU unit and monomethylhydrazine.

a. Claimant's Description of the Accident/Exposures.

Claimant testified that on three separate occasions<sup>[3]</sup> while he was working on the F-15 project, he participated in testing the MEPU unit. The MEPU, according to Claimant, was located in a bay accessed from underneath the plane and was not visible from the cockpit area. At that time, he essentially knew nothing about the MEPU and, was given no special training or protective equipment to carry out his task. Each time he was to perform the test, he recalled that he retrieved a 10 or 15 pound, stainless steel, unmarked, cylindrical tank containing liquid from a locked parts room in Building 1.<sup>[4]</sup> He carried the tank, which he sometimes referred to as the "test tank," up the steps of a platform adjacent to the cockpit, bracketed it to the floor of the aft cockpit, and connected two hoses which had been tossed up to him by a ground man. He then stood back eight to twelve or more feet away from the vent on the back of the aircraft while the ground crew ran the hydraulics systems by applying nitrogen pressure through the hoses. After each run, a misty, foul odor like rotten eggs was emitted from the vent. (See Exhibit C).

Claimant's reaction to the exhaust deepened with each exposure. After the first run, Claimant said he gagged and his eyes burned, but he finished his shift. He claims he started having stomach problems, was constantly belching, and could not eat. He described a strong eruption of gas that uncontrollably emitted from his mouth that evening. At the second test, Claimant stood further away, but the exhaust was stronger, more plentiful, and misty, like a cloud. Claimant felt terrible. He started getting dizzy spells, his stomach complaints increased, and he began to lose control of his temper. He could only eat oatmeal and eggs. He did not throw up, but he claimed to have taken six to eight sick days after the first two MEPU tests.<sup>[5]</sup>

On the occasion of the third test, Claimant followed the same set up procedure, noting the tank had more liquid than ever before. After the test run, there was more exhaust, and the smell was terrible. Claimant felt pain and pressure in his stomach, and ran to the restroom, where he threw up for twenty minutes. He stated he got really sick for months thereafter, and started having internal problems of all kinds, as well as blackouts. When asked to perform the test a fourth time, Claimant refused, stating the smell made him feel sick, so the supervisor gave him a different assignment.

Claimant did not report his immediate symptoms to his supervisors, or to the employee health unit. At the time he was working for Employer, Claimant said he never connected the terrible smell and his resulting sickness following each of the MEPU test runs with his escalating ill-health, so he never made a report to his supervisor or sought treatment at Employer's health department.

b. Claimant's Testimony Regarding Post-Employment Events.

Claimant testified that after he spoke to Earl Filler in 1997, he began his MEPU research, and concluded that the tank he bolted to the aft cockpit on those three occasions contained monomethylhydrazine or M86 fuel. Among the documents he obtained in August 2003 was a Development Program Manual ("DMP") that furnished instructions for servicing checkout and ground operation of the MEPU (Exhibit E). He claimed the "specs" in DMP supported his conclusion that the MEPU test required M86 fuel. According to his interpretation of the collected information, Claimant thought that monomethylhydrazine was necessary to lubricate the seals of the gas turbine module to prevent lock up. Therefore, he concluded the test tank contained the toxic fuel, and pressure from the hoses forced the fuel out the exhaust vent, causing the misty, foul odor. Alternatively, Claimant at times suggested there might have been trace amounts of monomethylhydrazine in the MEPU that were forced into the air by the pressure test.

c. Credibility Issues.

In order to meet his burden of proof in this case, Claimant must first convince this finder of fact that his testimony is accurate and trustworthy. However, I found Claimant's testimony to be inconsistent and inaccurate. Some discrepancies may be explained by the passage of time, but others involve recent events. For example, there are two events where the reliability of Claimant's recollection was called into question. First was the issue of how Claimant came to see Dr. Kopp. On December 9, 1997, Dr. Shelby Kopp examined Claimant, and issued a five-page report concluding his multiple medical problems were not related to the brief monomethylhydrazine exposure he reported to have occurred at work. The report was addressed to Claimant, and Dr. Kopp testified Claimant arranged for the examination himself. At hearing, Claimant denied he chose to go to Dr. Kopp. First, he insisted the insurance company sent him to Dr. Kopp, and then he suggested it was the Employer's attorney who arranged the appointment. When presented with evidence that the insurance company and its attorney were unaware of his claim on December 9, 1997, he conceded he initiated the exam. Then Claimant denied ever

having received the report, even though it was properly addressed to his home. Claimant's recollections, which distance him from an unfavorable report, were not reliable.

The second example of a situation where Claimant damaged his own credibility involves his testimony regarding a recorded statement. To briefly summarize, Fremont adjuster Jim Gregory took a recorded statement by phone from Claimant on January 23, 1998. The transcript, original tape, and Mr. Gregory's testimony establish a conversation between Claimant and Gregory. Claimant denied having anything more than a brief conversation with Mr. Gregory by phone, denied his voice was on the "Gregory tape" (even though the recorded voice strongly resembled Claimant's), and declared his phone records could prove no such conversation took place. He steadfastly maintained that, although the conversation occurred as transcribed and was factually accurate, it was between him and a *woman* who came to his home. Even when presented with irrefutable evidence, Claimant was unwilling to accept that his recall regarding the statement was mistaken. While the circumstances surrounding the statement do not have anything to do with the substance of the underlying case, Claimant's obstinate position on this tangential issue was harmful to his overall credibility.

There were various subjects on which Claimant's testimony changed over time. Comparing his deposition testimony from March 2003 to his testimony at hearing in 2004, Claimant changed his testimony regarding the following: the number of co-workers involved with the MEPU test; the timing of the tests in relation to documented events such as a layoff; the tail number of the plane he worked on; and his description of the tank. Each change brought his testimony a little closer to the information on the MEPU he received subsequent to the deposition.

In addition to the testimonial inconsistencies, Claimant's conduct was revealing. I had the opportunity to observe Claimant's demeanor over the eight days of testimony, while he was on the witness stand, listening to other witnesses, and off the record. His behavior was one of a man who was completely invested in his cause, convinced he was correct, and unable to admit he might be mistaken on even a minor point. He visibly or audibly reacted to testimony with which he disagreed, got upset, interrupted the proceedings with questions for the court or his attorney, and had to be instructed on several occasions regarding proper decorum in the hearing room. His behavior called into question whether he could be a reliable historian or witness.

## II. OTHER FACT WITNESSES.

### a. James Anderson (live testimony/Exhibit W).

Claimant called Mr. Anderson, who testified live and by deposition. He retired in 1999 after working thirty-five years for Employer. He worked with Claimant on the early F-15s in Building 2, has maintained a 35-year friendship, and talks with Claimant "all the time." Mr. Anderson's description of the MEPU test he ran with Claimant paralleled Claimant's description in many ways. He testified that Claimant retrieved a tank from a separate room, installed the tank in the cockpit of the F-15, connected a hose from below, and ran the test. He was on the ground, and smelled an odor like rotten eggs, only worse. He knew there was liquid in the tank because he heard sloshing. On the third test, Claimant got sick, and refused to run the test again. Mr. Anderson confirmed that he and Claimant were not told what was in the tank, and were not given any training or protective gear for performing the MEPU test.

However, Mr. Anderson's story differs from Claimant's in several ways. He testified the tank was smaller, described a red stripe, and said the tank was stored in a metal safety box. He did not mention the involvement of an electrician, which is consistent with Claimant's deposition statement but not his trial testimony, and he said there was only one hose thrown up to Claimant. He remembered that the tank was not hooked up to the MEPU unit until after the nitrogen test was run. He affirmed that the tank stayed in the plane, and that he and Claimant worked on more than one plane. He stated that while Claimant ran the MEPU test three times, it was only on the last run that he got sick, and that time Claimant reported that there was a loose line. Mr. Anderson's recollection was that he and a co-worker on the ground had to assist Claimant from the cockpit down the stairs to the ground.

### b. Glen Arthur Borman, Jr. (live testimony).

Mr. Borman is an engineer who has worked for Employer for 43 years. He has sound general knowledge of Employer's facilities and practices, had first hand involvement in the early design and manufacture the F-15, and

investigated the issues raised by Claimant's allegations of which he did not have direct knowledge. His testimony lasted many hours and covered various subjects, and is recounted herein in a significantly condensed form.

Mr. Borman supplied insight into Employer's facilities and their uses. He testified that F-15 final assembly occurred in Building 2. Other buildings or specific outdoor locations were designated for chemical storage, total system operations, and engine runs. There was no fueling allowed in Building 2. Although he could not say with complete certainty that there was never M86 fuel or monomethylhydrazine in Building 2, his personal knowledge, the people he spoke with, and the documents he studied all indicated such fuel was not present in the final assembly area as claimed by Claimant. As to the pivotal question of whether there was an M86 fuel tank in Building 2, Mr. Borman testified that there was no logical reason to have fuel inside the MEPU tank in Building 2, but there were a lot of very logical reasons to leave it empty.

Mr. Borman provided general information regarding the F-15 program and aircraft. He identified the planes that had MEPU's installed, further explained the production schedules reflected in Exhibits 7, 8 & 18, and confirmed the last F-15 to possibly have a MEPU left final assembly on October 25, 1973. Aided by detailed diagrams, Mr. Borman explained the location, access to, and purpose of the equipment bays, including the home of the MEPU on the back wall of Bay 5/aft cockpit, which was located behind the cockpit, and accessed from above after the canopy is removed (See Exhibit 23). He also explained why the Air Force erred by indicating the MEPU was installed in the F-15 used for the "time-to-climb" tests (Exhibit Z).

Mr. Borman established the credible details regarding the MEPU unit. As an engineer, he explained that the purpose of the MEPU system was to provide back up power in the event of an in-flight power loss. He pinpointed the location of the MEPU unit in the F-15, specified its size, described the points of access thereto, and established that Claimant's description of the MEPU location was inconsistent with the other credible evidence. Mr. Borman explained the safety and economy reasons the MEPU design provided for nitrogen test spin ports, how the nitrogen test was run, and why the test spin bypassed fuel lines, all of which were inconsistent with the description of the test given by Claimant. Despite his personal knowledge and research, Mr. Borman found no evidence or documentation of attach points for a "test tank," nor did he find any other evidence which would support Claimant's theory that he was exposed to monomethylhydrazine from a test tank while running the MEPU check in Building 2.

c. Vince Misuraca (live testimony).

Mr. Misuraca is a 20-year employee of Employer who currently works in the planning and scheduling department, and has custody and control of the historical documents from his department. Mr. Misuraca convincingly established the foundation for Exhibits 7&8/18, which reflect the actual dates on which each of the early F-15 aircraft passed through the various stages of production, testing, and delivery to the customer. By his testimony and exhibits, Mr. Misuraca established that the first of ten aircraft that had or could have had MEPU units installed began final assembly in May 1972, and the last cleared final assembly on October 25, 1973. No aircraft spent more than eighty-one days in final assembly.

d. Harold Gregory (live testimony).

Mr. Gregory had worked for Employer for nearly 35 years when he retired in 1999, most recently as a Principal Technical Specialist in fire protection and safety. During his career, he reviewed safety issues, conducted ongoing inspections and initiated corrective actions with respect to the storage and use of hazardous materials on Employer's premises.

Mr. Gregory established that Employer segregated storage of chemicals by type, and hazardous materials were stored in Building 38. He explained that M86 fuel was restricted in its storage and use: it was allowed only in Building 41 and on flight ramps; it was loaded in an auxiliary flight tank; and those who worked with it required special training, clothing and procedures. To have M86 fuel in Building 2 would be inconsistent with Employer's internal procedures and third party insurance policies.

e. Dale Scheer (live testimony).

Mr. Sheer is a chemist with Employer who explained the properties of monomethylhydrazine and M86 fuel, both of which are dangerous. Essentially, when the fuel is burned, it converts to gas, and the exhaust consists of byproducts such as nitrogen, hydrogen and trace gases. Even if the MEPU unit was tested at the manufacturer, there would be no trace M86 fuel left when the unit was later tested at Employer with the nitrogen spin port. Monomethylhydrazine and M86 fuel have no lubricating properties.

f. James Gregory (live testimony).

Mr. Gregory (no relation to Harold Gregory) investigated Claimant's claim for Freemont Insurance. He credibly established that he took a lengthy statement from Claimant by phone on January 23, 1998 that was recorded (Exhibit 3) and transcribed (Exhibit 5), then followed up by letter that same day (Exhibit 6).

g. Nanette Piercefield (live testimony).

Ms. Piercefield was briefly the adjuster on Claimant's file. She established the foundation for the tapes of the McGill-Gregory interview of January 1998. She also identified Exhibit 20, the tape of the interview of Claimant conducted by Donna Mollahan of Crawford & Co. on March 18, 1998. She was never at Claimant's house.

### III. MEDICAL EVIDENCE.

a. Dr. Peter G. Tuteur (Exhibit A).

Dr. Tuteur is a pulmonologist who examined Claimant on February 19, 1999.<sup>[6]</sup> Dr. Tuteur assumed the history Claimant gave was accurate, that in the 1970's, he was exposed to high concentrations of monomethylhydrazine. Dr. Tuteur understood that on three occasions, two or three months apart, Claimant was directly in line with an exhaust port when a test required the venting of monomethylhydrazine for three or four minutes. Claimant experienced "typical initial symptoms of headache, nausea, vomiting, and subsequent development of liver, renal and CNS disorders typical of and regularly reported in relationship to similar exposures." Dr. Tuteur diagnosed multiple chronic sequelae involving several different organ systems from the exposures, including a convulsive disorder, personality change, idiopathic portal hypertension, and splenomegaly. Claimant's cardiac problems were unrelated, and he had no pulmonary problems.

Although he has not personally treated patients with industrial monomethylhydrazine exposures, Dr. Tuteur has treated a few mushroom poisoning cases involving the same chemical compound. He asserted that there is no safe level of monomethylhydrazine exposure, and anyone working with this toxic substance must be totally protected. While symptoms typically develop in close proximity to an exposure, Dr. Tuteur testified that he thought it was possible for symptoms to develop nine to fifteen years after an exposure to monomethylhydrazine.

In explaining his methodology, Dr. Tuteur stated that he starts with the patient's history, which in this case was provided by Claimant, and included the assumption that Claimant was exposed to high concentrations of monomethylhydrazine. After the history, Dr. Tuteur gets objective findings, develops differential diagnoses, and attempts to prove the diagnosis as best he can. For example, in this case Claimant had splenomegaly, or an enlarged spleen. There was no other explanation for the splenomegaly, so Dr. Tuteur attributed it to monomethylhydrazine exposure. He testified that there was a "strong biological plausibility" that the spleen and exposure were related.

b. Dr. Shelby Kopp (Exhibit 17).

Dr. Kopp is a physician who is board certified in occupational environmental medicine. He initially conducted an examination on December 9, 1997, at Claimant's request. From Claimant's testimony and medical records, he recorded a medical history since 1976 consistent with the evidence at hearing. The description of the occupational exposure was similar to the trial testimony on the essential points: in sum, Claimant told Dr. Kopp that he was exposed to MEPU gas/monomethylhydrazine vapors that smelled like rotten eggs on three occasion for a few minutes at a time. Claimant

reported fewer earlier symptoms, but did say he vomited and got sick after the third exposure. Thereafter, he began to notice behavior changes, what were later diagnosed as petite mal seizures, stomach problems, and spleen problems. Dr. Kopp's examination was normal, but for some abdominal discomfort and an elevated blood pressure. In late 2003, Employer provided Dr. Kopp with additional information and asked for a supplemental report, which he issued on or about January 21, 2004.

Dr. Kopp confirmed several characteristics of monomethylhydrazine: it is toxic, corrosive, has a fishy-ammonia smell, causes reactions proximal in time to exposure, and is eliminated from the body within days of exposure. He described it as a type of irritating chemical that, if you had an exposure to it, "you would know it, period." He concluded that Claimant's "multiple medical problems were not at all related to a very brief monomethylhydrazine exposure that he reported" and that no toxicological literature supports his contentions as to the type or timing of problems. Specifically, he explained that kidney stones and cysts such as Claimant's are not the type of problems associated with monomethylhydrazine exposure, nor are pulmonary embolism or hypersplenism, and the onset of Claimant's liver and seizure problems is too remote to be connected.

Dr. Kopp agreed with nearly all the conclusions of Dr. Long, but took issue with some of the opinions put forth by Dr. Tuteur. For example, Dr. Kopp explained why Dr. Tuter's generic statement that liver, renal and central nervous system problems are associated with monomethylhydrazine exposure is misleading: it does not take into account the specific type and timing of the problems experienced by Claimant. Dr. Kopp also quoted the safe level of exposure to monomethylhydrazine identified by the American Conference of Governments and Industrial Hygienists, challenging Dr. Tueter's statement that there is no safe exposure.

c. Dr. Christopher Long (testified live).

Dr. Long is the Chief Toxicologist for St. Louis County, is on the faculty at Saint Louis University School of Medicine, Department of Pathology, and has over thirty years of experience in the field of toxicology. He described the following characteristics of monomethylhydrazine: it has a fishy/ammonia/cleaning solution smell; causes symptoms within one to two days of exposure; is caustic (burning); would cause pulmonary toxicity if inhaled; seizures caused thereby are acute; and it breaks down very rapidly and may explode when exposed to air. He recounted studies where subjects were exposed to much higher concentrations of monomethylhydrazine (i.e. drank a shot, exposed for 90 minutes with a faulty gas mask) and made full recoveries from their acute symptoms.

Dr. Long concluded with a reasonable degree of toxicological certainty that Claimant was not exposed to monomethylhydrazine. In support of that conclusion, Dr. Long noted: the smell Claimant described was inconsistent with monomethylhydrazine; the symptoms do not support exposure; and the concentration was far too low to cause problems.

d. Various Medical Records and Bills.

Claimant has had a complicated medical history over the last 20-plus years. The medical records submitted support the following diagnoses: irritable bowel syndrome, seizure disorder/epilepsy, normal bone marrow tests, normal liver biopsy, removal of an enlarged spleen, esophageal problems, pulmonary embolism, left kidney cyst, kidney stone, multiple episodes of abdominal and chest pain, a myocardial infarction with angioplasty, and the diagnosis of reflux esophagitis causing chest pain with normal liver and kidney tests. He twisted his knee and had allergic reactions. More recently, Claimant was treated for an cholecystectomy and chest pain. He was shown to have cirrhosis of the liver and an abnormal gall bladder.

Claimant compiled and submitted many of the invoices for the medical treatment he has received over the years. In addition, he tried to estimate his out of pocket expenses and future medical costs as best he could.

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

Based on the substantial and competent evidence, including the testimony and demeanor of the witnesses who testified live, a comprehensive review of all the documentary and graphic evidence, and consideration of the applicable provisions of the Missouri Workers' Compensation Law, I find that Claimant has not met his burden of establishing he is entitled to recover Workers' Compensation benefits. Specifically, I find:

I. **STATUTE OF LIMITATIONS AND NOTICE.**

The issues of the statute of limitations and notice present a conundrum. If there was credible evidence that Claimant

had severe, immediate and debilitating reactions each time he was exposed to the toxic fumes, his injuries could be “accidental,” and his claim would have to have been filed within one year. See *McKay v. Delico Meat Products Co.*, 351 Mo. 876, 174 S.W.2d 149 (1943); *Vogt v. Ford Motor Co.*, Mo.App., 138 S.W.2d 684(1940)(It has been held in Missouri that the breathing of noxious fumes may constitute an accident where objective symptoms of injury were manifest); §287.430 RSMo 1965. However, as discussed below, Employer’s attorney effectively called into question the reliability of Claimant’s testimony on many issues, such that there is a question whether Claimant’s actually exhibited objective symptoms of injury after each exposure. It would be unjust to find Claimant credible regarding the nature and extent of his immediate symptoms solely to defeat his claim.

If Claimant’s injuries are considered to be the result of an “occupational disease,” then Claimant is not required to file a claim until “until it becomes reasonably discoverable and apparent that a compensable injury has been sustained.” *Mann v. Supreme Express*, 851 S.W.2d 690, 691 (Mo.App.E.D.1993)(overruled on other grounds). The standard for the running of the statute of limitations requires a disability or injury that is compensable. *Sellers v. Trans World Airlines, Inc.*, 752 S.W.2d 413, 416 (Mo.App. W.D. 1988)(overruled on other grounds). An employee cannot be expected to institute a claim unless it is based on reliable information that conditions in the work place caused employee's disability. *Id.*; *Gillam v. General Motors Corp.*, 913 S.W.2d 81, 83 (Mo.App. E.D. 1995)(overruled on other grounds). In this case, Claimant could not be expected to file a claim until he learned he might have been exposed to monomethylhydrazine (his conversation with Earl Filler) and/or Dr. Tuteur told him it was the purported cause of his injuries.

I find that the statute of limitations does not act to bar consideration of the merits of this claim. The same holds true for Employer’s notice defense. *Bryant v. Ireco, Inc.*, 963 S.W.2d 346, 348 (Mo.App. E.D.,1997)(The statutory notice requirement does not facially apply to occupational disease claims).

## II. CLAIMANT WAS NOT EXPOSED TO MONOMETHYLHYDRAZINE.

The burden of proof rests with the claimant in a workers' compensation case. The claimant must produce evidence to show that the employer is liable. *Keener v. Wilcox Elec. Inc.* 884 S.W.2d 744, 747 (Mo.App. W.D. 1994)(citations omitted)(reversed on other grounds). In this case, the cornerstone to Claimant’s claim is that he was exposed to the monomethylhydrazine while testing the MEPU unit in Building 2. The overwhelming weight of the credible evidence establishes it was impossible for Claimant to have been so exposed. Thus, Claimant has not met his burden of proof.

I find that there is no logical reason for monomethylhydrazine to have been in Building 2 during the final assembly of the F-15. Monomethylhydrazine and M86 fuel are dangerous substances. Employer knew this, and took extensive steps to assure the safety of their employees and property. To have M86 fuel in Building 2 would be inconsistent with Employer’s internal procedures and third party insurance policies. Employer segregated the storage of such chemicals in a separate safe building. Use of M86 fuel was prohibited in enclosed areas in general, and in Building 2 in particular – separate safe zones were designated for the use of such fuels. Personnel handling M86 fuel were given special training and safety gear. Claimant did not receive such training and gear because he was not handling monomethylhydrazine. To suggest Employer disregarded all its safety policies, and placed its personnel and property in danger in the manner suggested by Claimant, is preposterous.

I find that monomethylhydrazine was not involved in the testing or assembly of the MEPU in final assembly. The nitrogen spin ports in the MEPU bypass the fuel lines, and were designed to “test” the unit without the impracticality, expense and danger of burning fuel as if in flight. M86 has no purpose, for lubrication or otherwise, during the testing of a MEPU – if it did, such testing would occur outside Building 2. I find the testimony of Mr. Borman credible, especially when he said there was no logical reason to have fuel inside the MEPU tank in Building 2, but there were a lot of very logical reasons to leave it empty. Claimant relied on the DPM to support his claims, but the testing procedure he described was not outlined anywhere in the DPM – his interpretation was from “reading between the lines.” Even Earl Filler, who tipped Claimant off to the dangers of M86, insisted Claimant could not have run the MEPU in final assembly.

I find that Claimant’s description of his alleged exposure is inconsistent with exposure to monomethylhydrazine. His description of the odor is not that associated with monomethylhydrazine. The symptoms he described were not consistent with the expected effects of exposure to airborne toxic monomethylhydrazine. Primarily, Claimant’s testimony regarding the entire process of retrieving the tank, installing it, running the test, and suffering the effects of the exhaust is not credible. He changed his story

frequently, but his account was still inconsistent with all the credible evidence.

In sum, I find that Claimant could not have been exposed to monomethylhydrazine, and in fact was not so exposed. All the credible evidence supports such a conclusion. While Claimant may have played a role in testing the MEPU unit thirty years ago, he was not exposed to monomethylhydrazine in doing so.

### III. CLAIMANT'S MEDICAL AILMENTS ARE NOT CAUSED BY MONOMETHYLHYDRAZINE.

Claimant has had many real and serious medical problems throughout his life which he now claims were contracted at work. In order to recover workers compensation benefits, he must establish, generally through expert testimony, the probability that the claimed occupational disease was caused by conditions in the work place. *Selby v. Trans World Airlines, Inc.*, 831 S.W.2d 221, 223 (Mo. App. W.D. 1992)(overruled on other grounds); *Brundige v. Boehringer Ingelheim*, 812 S.W.2d 200, 202 (Mo. App. 1991). Claimant must prove "a direct causal connection between the conditions under which the work is performed and the occupational disease." *Webber v. Chrysler Corp.*, 826 S.W.2d 51, 54 (Mo.App. E.D. 1992); *Estes v. Noranda Aluminum, Inc.*, 574 S.W.2d 34, 38 (Mo.App. 1978).

I find that the credible medical evidence overwhelming establishes that none of Claimant's maladies are caused by monomethylhydrazine exposure. Although the acute onset of seizures and liver problems has been associated with monomethylhydrazine exposures, such problems do not arise years after exposure. Claimant's other problems, kidney cysts and stones, pulmonary emboli, and splenomegaly, are not the type of problems associated with monomethylhydrazine exposure. Even Dr. Tuteur did not relate Claimant's cardiac problems to the exposure. Finally, Claimant did not experience the most likely effect of inhaling toxic fumes, namely acute lung problems

I find the opinions of Dr. Kopp and Dr. Long (that Claimant has no disorders caused by monomethylhydrazine) to be trustworthy and consistent with the other credible evidence. Both have expertise in the subject matter of occupational exposures to chemicals, and supported their opinions soundly. Dr. Tuteur, on the other hand, is not credible in this case because he relied upon Claimant's reported history of exposure to large doses of monomethylhydrazine, which is not accurate. He also could not account for the long delayed onset of symptoms, nor did he consider the specific problems Claimant experienced.

### IV. CLAIMANT SHALL NOT RECOVER MEDICAL EXPENSES, TEMPORARY TOTAL DISABILITY, OR PERMANENT PARTIAL DEISABILITY BENEFITS.

Claimant was not exposed to a toxic substance at work. His ailments, while real, are not causally related to his work activities. Employer is not responsible for providing any workers' compensation benefits, including medical, temporary total disability, or permanent partial disability benefits.

### CONCLUSION

Claimant was not exposed to a toxic substance at work as he alleged. His various maladies are not caused by any events that occurred at work. He is not owed any benefits under the Missouri Workers' Compensation Act.

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

KARLA OGRODNIK BORESI  
Administrative Law Judge  
Division of Workers' Compensation

A true copy: Attest:

---

René T. Slusher  
*Director*  
*Division of Workers' Compensation*

---

[1] The evidence is cited and discussed in a significantly abridged form. The fact that certain evidence is not recounted or mentioned does not mean it was not considered, as all the evidence was evaluated in reaching the conclusion.

[2] "MEPU" stands for Monofuel Emergency Power Unit. It is a system installed in early F-15 aircraft to provide backup hydraulic power in the event of an in-flight twin-engine failure. The MEPU unit is fueled with M86 jet fuel. The primary component of M86 fuel is monomethylhydrazine.

[3] Claimant's testimony as to the timing of the tests is inconsistent. The claim listed 1976; at deposition in March 2003 he said between May and December 1972; at hearing he insisted the last exposure occurred in late 1973, although his testimony as to when the critical events occurred even changed during the course of the hearing. Claimant insisted the tests were performed on the same aircraft.

[4] The building Claimant described as Building 1 also includes what is marked Building 2 on Employer's facilities map (Exhibit 9). See also Exhibit B, Claimant's hand drawn diagram.

[5] There are no significant blocks of sick time documented in Claimant's personnel file around the possible dates of exposure. See Exhibit AA.

[6] Originally, Claimant was sent to Dr. Tuteur for an IME under order of Chief Administrative Law Judge Dowd. Although his order was successfully quashed, the exam proceeded, with Claimant's attorney paying the costs.