

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

Injury No.: 98-034419

Employee: Edmond McNack

Employer: Jackson County Sheriff's Department

Insurer: Self-Insured

Date of Accident: Alleged March 25, 1998

Place and County of Accident: Alleged Kansas City, Jackson County, Missouri

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by section 287.480 RSMo. Having reviewed the evidence and considered the whole record, the Commission finds that the award of the administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Act. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated September 13, 2005, as supplemented herein, and awards no compensation in the above-captioned case.

Dr. Wasfi explained in convincing biological detail why she was unable to medically extend the studies showing an association between HAART medications and the development of sarcoidosis in HIV-positive patients to employee's case.

On the other hand, Dr. Friedlander extended the association revealed by those studies to employee's case without offering a medical explanation for the extension. While Dr. Friedlander testified within a reasonable degree of medical certainty that it is more likely than not that the HAART medications caused a flare up of employee's sarcoidosis, his supporting testimony undercuts the certainty of his opinion. Dr. Friedlander admitted that the etiology of sarcoidosis is unknown; the manner of contraction of sarcoidosis is unknown; the causes of flare-ups of sarcoidosis are unknown; the HAART-sarcoidosis causal link is a gray area; and there are no known cases of HAART-induced sarcoidosis in an HIV-negative individual. When viewed in light of his testimony as a whole, Dr. Friedlander's opinion that the HAART medications are the probable cause of the development of employee's sarcoidosis symptoms is based upon speculation, guesswork, and surmise. Dr. Friedlander's opinion is simply not persuasive.

A review Dr. Wasfi's CV in conjunction with her description of her medical experience and current practice treating sarcoidosis patients convinces us Dr. Wasfi is extremely credible in the area of sarcoidosis. We believe the most credible and convincing testimony is the opinion of Dr. Wasfi that there is no biologically plausible explanation for the administration of HAART medications leading to sarcoidosis in an HIV-negative person.

By this supplemental opinion, we agree with the conclusion of the administrative law judge that employee has failed to meet his burden of proving medical causation in this matter.

The award and decision of Administrative Law Judge Paula A. McKeon, issued September 13, 2005, is attached and incorporated by this reference, to the extent it is not inconsistent with this award and decision.

Given at Jefferson City, State of Missouri, this 24<sup>th</sup> day of April 2006.

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

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

DISSENTING OPINION FILED

John J. Hickey, Member

Attest:

\_\_\_\_\_  
Secretary

## AWARD

Employee: Edmond McNack Injury No. 98-034419

Employer: Jackson County Sheriff's Department

Insurer: Self-Insured

Additional Party: N/A

Hearing Date: August 17, 2005

Checked by: PAM/abj

## 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? Yes.
3. Was there an accident or incident of occupational disease under the law? Yes.
4. Date of accident or onset of occupational disease: March 25, 1998.
5. State location where accident occurred or occupational disease was contracted: Kansas City, Jackson County, Missouri.
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes.
7. Did employer receive proper notice? Yes.
8. Did accident or occupational disease arise out of and in the course of the employment? Yes.
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: McNack was bitten by a female prisoner on the finger in the course and scope of his employment with the Jackson County Sheriff's Department.
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: Finger.
14. Nature and extent of any permanent disability: None.
15. Compensation paid to date for temporary disability: \$3,486.43
16. Value necessary medical aid paid to date by employer/insurer? \$53,444.00
17. Value necessary medical aid not furnished by employer/insurer? \$151,929.12
18. Employee's average weekly wages: \$463.60
19. Weekly compensation rate: \$309.08 / \$278.42 per week
20. Method wages computation: By agreement.

#### COMPENSATION PAYABLE

21. Amount of compensation payable: N/A
22. Second Injury Fund liability: No.
23. Future requirements awarded: N/A

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

Employee: Edmond McNack Injury No. 98-034419  
Employer: Jackson County Sheriff's Department  
Insurer: Self-Insured  
Additional Party: N/A  
Hearing Date: August 17, 2005 Checked by: PAM/abj

On August 17, 2005, the parties appeared for hearing. The Division had jurisdiction to hear this case pursuant to §287.110. The employee, Edmond McNack, appeared in person and with counsel William Manson.

The employer, Jackson County Sheriff's Department, insured by its authority to self-insure, appeared through its counsel, Randell Collins.

## STIPULATIONS

At the hearing, the parties stipulated to the following:

1. That both the employer and employee were operating under and subject to the provisions of the Missouri workers' compensation law and all liability of the employer was fully insured by its authority to self-insure;
2. that McNack was its employee operating under and subject to the provisions of the Missouri workers' compensation law;
3. that McNack provided proper notice of the injury and a timely claim for compensation was filed;
4. that McNack sustained an accident arising out of and in the course of his employment on March 25, 1998;
5. that McNack's average weekly wage was \$463.60, resulting in a compensation rate of \$309.08 temporary total disability and \$278.42 per week permanent partial disability; and
6. that compensation was paid to the employee in the total amount of \$3,486.43 and medical expenses were provided by the employer in the total amount of \$53,444.00.

## ISSUES

The parties requested the Division to determine the following:

1. Whether the conditions Edmond McNack complains of are medically/causally related to his accident of March 25, 1998;
2. whether Edmond McNack is permanently totally disabled as a result of his March 25, 1998, injury;
3. whether Edmond McNack is entitled to past medical expenses totaling \$151,929.12; and
4. whether Edmond McNack is entitled to future medical expenses to cure and relieve the effects of his March 25, 1998, injury.

## FINDINGS AND RULINGS

Edmond McNack is a 40-year-old former Jackson County sheriff's deputy. On March 25, 1998, McNack was transferring a prisoner to a hospital when she bit him on the finger. McNack sought emergency treatment at the hospital. The emergency room doctor prescribed a combination AZT/CT3 prophylaxis, hereinafter "HAART" (highly active anti-retroviral therapy), in case the prisoner was HIV positive. Both the prisoner and McNack were later tested HIV negative.

During the course of the 10-week HAART administration, McNack developed a number of symptoms. McNack began to feel nauseated and tired. McNack had a fever, night sweats, and blurry vision within one to two weeks of taking the medications. McNack began to lose weight. McNack ultimately terminated the course of HAART prophylaxis two weeks early.

McNack continued to suffer many symptoms. McNack required numerous hospitalizations and was seen by

many doctors during this time. By September 1998 McNack was diagnosed with sarcoidosis. McNack's sarcoid condition was treated with high-dose prednisone. McNack developed avascular necrosis of both hips as a side effect of the prednisone. McNack received bilateral hip replacements.

McNack has had his gallbladder removed as well. McNack has many symptoms and complaints related to the sarcoidosis and accompanying treatment. McNack complains of fatigue, joint pain, hip pain, tremors, wrist pain, loss of balance, and numbness. McNack has not worked since September 2000 when his employment with the county was terminated.

McNack claims he developed or aggravated an unknown preexisting sarcoid condition as a result of taking the HAART prophylaxis.

There is no dispute that McNack sustained a human bite and was administered HAART prophylaxis. There is no dispute that McNack suffers from sarcoidosis. The question is whether the administration of the HAART prophylaxis either caused or aggravated McNack's sarcoidosis.

It is the burden of the claimant to establish the causal connection between the accident and resulting injury. Landers v. Chrysler Corp., 963 S.W.2d 275, 279 (Mo.App. E.D. 1997). In this case the issue is one of medical causation, which must be established by expert opinion. The medical causation must be demonstrated by "scientific or medical evidence showing the cause and effect relationship between the complained of condition and the asserted cause." Landers at 279; McGrath v. Satellite Sprinkler Systems, 877 S.W.2d 704, 708 (Mo.App. 1994). Additionally, medical expert opinion must be based on reasonable medical certainty that a condition was caused by a particular event or circumstance. Carter v. Jones Truck Lines, Inc., 943 S.W.2d 821 (Mo.App. S.D. 1997).

Expert testimony expressed in terms of "might" or "could" without additional evidence of causation is insufficient to support a specific finding. Carter at 826; Wiedmaier v. Robert McNeil Corp., 718 S.W.2d 174 (Mo.App. W.D. 1986); Shackelford v. West Central Electric Cooperative, Inc., 674 S.W.2d 58, 62 (Mo.App. W.D. 1984).

The parties have each provided expert opinions as to the medical causation issue presented in this claim. Dr. Edward Friedlander is a medical instructor and board-certified pathologist. Friedlander has many years of experience in pathology and has testified as to causation issues in both criminal and civil matters. Dr. Yasmine Wasfi is an instructor with National Jewish Hospital in Denver, Colorado. Dr. Wasfi specializes in treatment and research of sarcoidosis. She has treated over 100 patients with sarcoidosis.

Both Dr. Friedlander, on behalf of McNack, and Dr. Wasfi, on behalf of the employer, agree that McNack has sarcoidosis but disagree as to whether the HAART regimen taken by McNack caused him to develop sarcoidosis or otherwise made preexisting dormant sarcoidosis symptomatic. Between March 25, 1998, and June 10, 1998, McNack had a drop in his albumin level from 4 to 3. Dr. Friedlander opines this is indicative of sarcoid symptomology. Dr. Wasfi disagrees. Dr. Wasfi testified that chest x-rays of June 10, 1998, revealed evidence of sarcoidosis. Both doctors agree that there is no evidence indicating McNack had sarcoidosis or its symptoms prior to March 25, 1998.

Dr. Friedlander testified that although not a certainty, he thought the taking of the HAART probably caused McNack to develop sarcoidosis or otherwise made a preexisting dormant sarcoidosis symptomatic for the following reasons: (1) the temporal relationship between the taking of the HAART the development of the sarcoidosis indicated on the chest x-ray of June 10, 1998, and the drop in McNack's albumin level was too strong to be coincidental; (2) HIV positive patients have developed sarcoidosis after taking HAART and the fact that a study had not been done on HIV negative patients taking HAART prophylactically is probably explained by the fact that there is not a large enough number of HIV negative patients taking HAART to warrant a case study, as HAART is primarily intended for HIV positive patients; and (3) there is antidotal evidence accepted by the medical community that certain drugs can cause a development of sarcoidosis even though there is no medically plausible explanation to explain why these drugs cause sarcoidosis.

Friedlander acknowledges that there is no research or medical documentation to support the development

of sarcoidosis in non-HIV patients following the administration of HAART medication. Friedlander testified the etiology of sarcoidosis is unknown. Friedlander stated that the coincidence of the medication and the development of the sarcoid symptoms is too suspicious not to be taken into account. Friedlander opines that reasonableness and fairness dictate a causal relationship between the HAART medications and McNack's development of sarcoidosis.

Dr. Wasfi agrees with Friedlander that the etiology of sarcoidosis is unknown. Wasfi also acknowledges that there are reports linking HAART therapy to sarcoidosis in HIV positive patients. Wasfi also is unable to find any medical reports or studies linking HAART medications to non-HIV-positive patients. Wasfi does not believe that McNack's drop in albumin level is significant or indicative of sarcoidosis. Wasfi opined it is biologically implausible for an HIV negative person to acquire sarcoid after taking HAART medications. Wasfi stated within a reasonable degree of medical certainty that McNack did not acquire sarcoidosis as a result of the bite on his finger and the taking of the HAART medications. Wasfi testified within a reasonable degree of medical certainty that the bite and the regime of HAART medications did not cause a flare-up or aggravation of preexisting sarcoidosis.

Dr. Friedlander strongly suggests that common sense, fairness, and reasonableness should dictate a finding in this case that the HAART medications caused McNack's sarcoid illness. But in addition to those concerns, McNack's claim must be supported by reasonable medical certainty. The temporal and coincidental nature of the administration of HAART and the onset of sarcoid symptoms is simply not sufficient to support McNack's medical causation theory. Dr. Wasfi, with experience and treatment of sarcoid patients and research in sarcoid issues, testified she did not believe within a reasonable degree of medical certainty that the two are related. Dr. Wasfi's testimony is credible. Dr. Friedlander's testimony falls short of an opinion based on reasonable medical certainty that McNack's taking of HAART medications either caused or aggravated McNack's sarcoidosis. Additionally, McNack failed to present any credible medical or scientific evidence to suggest a relationship between the administration of HAART therapy to non-HIV persons and the development of sarcoidosis.

Based on the expert testimony, I find that McNack failed to establish a medical causal relationship between the administration of HAART medications and the development and/or aggravation of McNack's sarcoidosis. McNack failed to meet his burden of proof in that regard. I find that the condition of sarcoidosis that Edmond McNack complains of is not medically causally related to his March 25, 1998, accident.

McNack's claim of permanent total disability, past medical expenses, and future medical expenses is also based on the development of sarcoidosis. Hence, a determination on any of those issues is rendered moot. The additional claim for benefits is denied.

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

Paula A. McKeon  
*Administrative Law Judge*  
*Division of Workers' Compensation*

A true copy: Attest:

\_\_\_\_\_  
Patricia "Pat" Secrest  
*Director*  
*Division of Workers' Compensation*

## 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 should be reversed.

The parties do not dispute that on March 25, 1998, employee was bit by a prisoner while working for employer; employee underwent HIV prophylaxis including the administration of AZT and 3TC; AZT and 3TC are two of the drugs used in highly active antiretroviral therapy (HAART); employee did not have a diagnosis or symptoms of sarcoidosis before the prophylaxis; and shortly after beginning the prophylaxis, employee began exhibiting symptoms of sarcoidosis.

The administrative law judge concluded that employee failed to establish a medical causal relationship between the administration of the HAART medications and the development and/or aggravation of employee's sarcoidosis. I disagree.

In a workers' compensation proceeding, all doubts should be resolved in favor of the employee and in favor of coverage, but a claim will not be validated where some essential element is lacking. The claimant has the burden of proving all the essential elements of the claim and must establish a causal connection between the accident and the injury. The claimant does not, however, have to establish the elements of his case on the basis of absolute certainty. It is sufficient if he shows them by reasonable probability. "Probability means founded on reason and experience which inclines the mind to believe but leaves room for doubt."

*Cook v. Sunnen Prods. Corp.*, 937 S.W.2d 221, 223 (Mo. App. 1996) (citations omitted).

The administrative law judge made the following findings regarding Dr. Wasfi's testimony:

Dr. Wasfi opined it is biologically implausible for an HIV negative person to acquire sarcoid after taking HAART medications. Wasfi stated within a reasonable degree of medical certainty that McNack did not acquire sarcoidosis as a result of the bite on his finger and the taking of the HAART medications. Wasfi testified within a reasonable degree of medical certainty that the bite and the regime of HAART medications did not cause a flare-up or aggravation of preexisting sarcoidosis.

If that were truly Dr. Wasfi's testimony, the administrative law judge's award might be supported. However, that was not Dr. Wasfi's testimony. Dr. Wasfi did not testify that the HAART medications did not cause employee's sarcoidosis. Dr. Wasfi testified that it is possible that HAART medications can cause sarcoidosis but she could not say to a reasonable degree of medical certainty that employee's HAART regime caused employee's sarcoidosis. In the conclusion of her report, Dr. Wasfi wrote, "it is possible that the sarcoidosis was precipitated by medications received to prophylax against HIV infection after a bite wound sustained at work."<sup>[1]</sup> The administrative law judge's findings as quoted above are simply not supported by the evidence.

What we have in this case is the testimony of Dr. Friedlander, within a reasonable degree of medical certainty, that the HAART medications caused employee's sarcoidosis and the testimony of Dr. Wasfi that it is possible that the HAART medications caused employee's sarcoidosis. No expert testified that the HAART medications did not cause the sarcoidosis.

The experts agree that there are few medical studies exploring an association between HAART therapy and the development of sarcoidosis because the HAART regime is a relatively new treatment. The first medical studies identifying an association between HAART and the development of sarcoidosis appeared in 1999 – after employee received the HAART medications. There are no case studies identifying a link between HAART therapy and the development of sarcoidosis in HIV-negative patients. Dr. Friedlander believes the absence of any such case studies is due to the low population of HIV-negative patients receiving HAART therapy and the low incidence of sarcoidosis in general.

In *Cook v. Sunnen Prods. Corp*, *supra*, employer asked the court to overturn a Commission finding of medical causation on the ground that employee's treating doctor, upon whose opinion the Commission relied, testified that the accident *could* have caused the injury. The opinions in *Cook* were as follows: employee's treating doctor testified that the accident "very possibly" caused the injury; employer's expert testified the accident possibly caused the injury; and employee's expert testified the accident caused the injury. After considering the expert opinions in conjunction with all of the evidence, the *Cook* court affirmed the Commission causation finding, noting that no expert testified that the accident did not cause the injury.

The court in *Davis v. GE*, 991 S.W.2d 699, 706-707 (Mo. App. 1999), was asked to pass on the sufficiency of expert medical testimony that an electrical shock probably caused employee's condition of headaches, irregular heartbeat, fatigue, etc. The court noted that, "expert testimony must be analyzed in the context of all of the evidence, so that a less than direct statement of reasonable medical certainty, combined with other corroborating evidence, may be sufficient to establish causation." *Id.* The court found employee had no history or indications of heart trouble before the 1973 electric shock, and began experiencing problems immediately thereafter. The *Davis* court concluded that the combination of this evidence and the expert testimony provided adequate support for the Commission's causation finding.

The *Davis* rationale is applicable in this matter. Employee had no symptoms of sarcoidosis before the administration of the HAART medications and began experiencing symptoms shortly after beginning the medications. Dr. Friedlander testified several times that it was more likely than not that the HAART medications caused employee's sarcoidosis and/or aggravated a preexisting condition of sarcoidosis. That it is "more likely than not" that the HAART medications caused the sarcoidosis was just what employee had to prove in this case. "The claimant does not...have to establish the elements of his case on the basis of absolute certainty. It is sufficient if he shows them by reasonable probability. 'Probability means founded on reason and experience which inclines the mind to believe but leaves room for doubt.'" *Cook*, 937 S.W.2d at 223. Dr. Friedlander identified several factors leading him to conclude that the HAART regime caused employee's symptoms including: studies showing an association between the HAART regime and the development of sarcoidosis in HIV-positive patients; a drop in employee's albumin levels shortly after beginning the HAART medications; and employee's development of sarcoid-symptoms shortly after beginning the HAART medications.

Following the rationale of *Cook* and *Davis*, the combination of the following facts leads me to conclude that the HAART medications caused and/or aggravated employee's condition of sarcoidosis:

- employee's lack of sarcoidosis symptoms before beginning the HAART medications;
- the timing of the development of the symptoms shortly after the administration of the HAART medications;
- Dr. Friedlander's expert opinion that the HAART medications caused and/or aggravated employee's sarcoidosis;
- Dr. Wasfi's opinion that it is possible that the HAART medications could cause sarcoidosis; and,
- the absence of an opinion that the HAART medications did not cause the sarcoidosis.

Employee has met his burden of producing evidence that the HAART therapy caused and/or aggravated his condition of sarcoidosis as well as the other elements necessary to establish the compensability of his claim. I would not deny benefits to this public servant simply because the medical literature does not yet reveal studies involving all of the effects of HAART therapy on HIV-negative patients. Employee's misfortune in suffering a human bite before medical science began publishing the ramifications of HAART therapy is but one factor to weigh with all of the other facts of this case.

Employee is entitled to workers' compensation including temporary total disability, permanent total disability, past medical expenses to cure and relieve employee of the effects of his condition of sarcoidosis and its sequela, and future medical care to cure and relieve him of the effects of his condition of sarcoidosis and its sequela. Among the known sequela are employee's hip problems. Employee's physicians treated employee's sarcoidosis with Prednisone. The experts agree that the Prednisone caused employee's avascular necrosis, which ultimately led to bilateral hip replacement.

Because the Commission majority denies workers' compensation benefits to this employee, I strongly dissent from

the Commission decision in this matter.

---

John J. Hickey, Member

---

[1] The administrative law judge misconstrued Dr. Wasfi's use of the phrase "biological plausibility." Dr. Wasfi was explicitly considering the plausibility criterion of Hill's Criteria in forming her opinion about causation. The literature cited in Dr. Wasfi's report and upon which Dr. Wasfi relied makes clear plausibility is but one of several criterion to consider when analyzing whether a causal link exists. Placed in the proper context, the administrative law judge erred in equating Dr. Wasfi's statement that the HAART-sarcoidosis causal link is biologically implausible in an HIV-negative person with an opinion that the link is biologically *impossible*.