Cavoretto v. General Electric (May 16, 1996)

VERMONT DEPARTMENT OF LABOR AND INDUSTRY

JAMES CAVORETTO	*)*	*State File No. F-2909*
	)	
	)	*By: Sheldon A. Keitel*
	)	*Hearing Officer*
v.	*)*	
	)	*For: Mary S. Hooper*
	)	*Commissioner*
	)	
GENERAL ELECTRIC	*)*	*Opinion # 16-96WC*

Heard in Montpelier, Vermont on 12/8/94, 10/17/95 & 10/28/95
Record closed December 22, 1995

APPEARANCES

Christopher J. McVeigh, Esq. for the claimant
Craig Weatherly, Esq. for the defendant

ISSUE

Did claimant suffer a personal injury by accident arising out of and in the course of employment on August 4, 1992?

CLAIM

1. Temporary total disability compensation under 21 V.S.A. §642.

2. Medical and hospital benefits under 21 V.S.A. §640.

3. Attorney's fees.

FINDINGS OF FACT

1. The following documents were admitted into evidence at the formal hearing:

Claimant's Exhibit 1 *Copy of alleged contents of label on lid of 55-gal drum in claimant's work area (handwritten by John Agard)*

Claimant's Exhibit 2 *Material Safety Data Sheet (TCE)*

Claimant's Exhibit 3 *Material Safety Data Sheet (TCA)*

Claimant's Exhibit 4 *Health Effects (TCA) (Ashland Chemical)*

Claimant's Exhibit 5 *Extract: Peripheral Neuropathy in Two Workers Exposed to 1,1,1-Trichloroethane (JAMA, Oct. 21, 1988, Vol. 260, No. 15)*

Claimant's Exhibit 6 *Article: Trichloroethylene and Dichloroethylene Poisoning, Robert S. McBirney, M.D.*

Claimant's Exhibit 7 *Article: Adolescent Abuse of Typewriter Correction Fluid, James E. Greer, M.D.*

Claimant's Exhibit 8 *Copy of alleged contents of label on lid of 55-gal drum in claimant's work area (handwritten by Sue Saunders)*

Claimant's Exhibit 9 *Generator Land Disposal Restrictions Notification dated 11/20/92*

Claimant's Exhibit 10 *Data Sheet re: 1,1,1-trichloroethane solvent (Dow Chemical Company)*

Claimant's Exhibit 11 *Medical records (87 pages total):*

-EMS/ER records 8/8/92 (4 pages)
-MCHV EEG report 8/12/92
-MCHV radiology report 8/24/92
-MCHV MRI report 8/25/92
-MCHV lab reports 9/2/92-1/23/93 (8 pages)
-MCHV electromyogram report 11/13/92 (3 pages)
-MCHV EEG report 2/1/94
-IME report 11/24/92 (Dr. Roomet) (3 pages)
-UHC reports (Dr. Dissin) 8/24/92-1/20/94 (8 pages)
-Villemaire Family Health Center 8/26/86-1/19/93 (35 pages)
-Fanny Allen Hospital 10/1/92-1/14/94 (22 pages)

Claimant's Exhibit 12 *Employer's injury report*

Claimant's Exhibit 13 *Generator Land Disposal Restrictions Notification dated 11/12/92*

Defendant's Exhibit A *Poisindex (trichloroethylene)*

Defendant's Exhibit B *Extract: Trichlorethylene (CCl2=CHCl), Peripheral Neuropathy, Vol. 2, Third Edition 3, p. 1544 (Dyck, Thomas et al.)*

Defendant's Exhibit C *Curriculum Vitae, Brian Mayes, Ph.D.*

Defendant's Exhibit D *Processing instructions / Set up instructions, for cleaning, degreasing, and deburring barrels (GE)*

Defendant's Exhibit E *Manufacturing Process Instruction (MPI)*

Defendant's Exhibit F *217F667 GECAL 50 (CONT'D)*

Defendant's Exhibit G *211F954 -- 30 MM GUN BARREL (YELLOW CARD)*

Defendant's Exhibit H *Summary of claimant's exposure to degreasing agents prepared by Ed Patterson*

Defendant's Exhibit I *Memo, 1/11/94, Robyn Frank to Bob Fraser*

Defendant's Exhibit J *Report, 1992-93 exposure monitoring*

Defendant's Exhibit K *Requisition and purchase order for TCA (May/June 1988)*

Defendant's Exhibit L *Material Travel Card*

Defendant's Exhibit M *Report of Industrial & Environmental Analysts, Inc. dated November 13, 1992*

2. Judicial notice was taken of the following documents in the Department's claim file relating to this matter:

Form 1 *Employer's First Report of Injury*
Form 5 *Notice of Injury and Claim for Compensation*
Form 6 *Notice and Application for Hearing*

3. On August 4, 1992, claimant was an employee and the General Electric

Company (GE), defendant herein, was claimant's employer within the meaning of Vermont's Workers' Compensation Act.

4. On the date in question, claimant was employed as a "barrel maker" (i.e., machine-gun barrels) in defendant's munitions plant on Lakeside Avenue in Burlington, Vermont. The plant was subsequently sold by defendant and its operations taken over by Martin-Marietta, the current proprietor.

5. Claimant was employed in various capacities by GE for 17 years prior to the incident which is the basis of the present claim; throughout his career at GE he had at least indirect contact with chemical solvents and degreasers in connection with his employment. The metal parts of the weapon systems being manufactured were coated with oil to facilitate the cutting, drilling, and other facets of machining them, and claimant's job responsibilities included using solvents to clean the oil from such parts.

6. It is undisputed that in the early years of claimant's employment at GE the degreaser of choice was a substance known as trichloroethylene, or TCE. In 1988, GE began using 1,1,1 trichlorethane (TCA) in accordance with occupational safety guidelines and industry practice because it was more environmentally appropriate and less toxic than TCE. (Testimony of Mayes and other GE employees; Def. Exhibit K.)

7. Claimant had worked in his position as a barrel maker for about seven months as of the date of the alleged injury; his job routine required him to clean the gun barrels in a degreasing tank by immersing them into the heated solvent and by spraying them with a hose and nozzle assembly located at the degreasing tank. Defendant purchased the solvent in large, industrial size drums; the degreasing tank was filled and replenished by lifting and emptying the drums into the tank.

8. The weapon system in production at the time of the alleged injury (a 50-calibre machine gun) was still in the prototype phase. It was common knowledge among GE employees, including claimant, that the success of the project was crucial to the company and that there would be widespread layoffs if GE was not awarded the contract for production of the weapon system.

9. On the morning of Tuesday, August 4, 1992, claimant accidentally sprayed himself in the face and on his clothing while using the hose at the degreasing tank. Claimant experienced stinging and irritation in his eyes and he went immediately to the wash room to rinse his face and eyes. Claimant was then directed to the dispensary where his eyes were again flushed by the company nurse. Although the stinging and irritation were already subsiding, claimant was sent to Dr. Guilfoy, an ophthalmologist, in accordance with company protocol for chemical splashes.

10. The ophthalmologist saw and treated claimant and returned him immediately to work. Claimant completed his shift that day and returned to work and completed all shifts on Wednesday, Thursday and Friday of that week. Claimant now alleges that he experienced other ill effects during the three days following the incident of August 4, but he made no complaint to his superiors or the company nurse.

11. A union official investigating the incident found a large drum near the degreasing tank labelled "TCE" and made a handwritten copy of the contents of the label (Claimant's Exhibit 1). It was also discovered that the employer, in addition to the Material Safety Data Sheet for TCA (Claimant's Exhibit 3), still maintained in its Safety Office the MSDS for TCE (Claimant's Exh. 2), both of which enumerate "effects of acute overexposure."

12. The parties vigorously dispute numerous factual matters concerning compliance with safety procedures, the kinds and degree of claimant's exposure to degreasing agents in general (but particularly during the period between January 1992 and the date of incident), and whether the degreaser in the tank on August 4, 1992 (or at any time since mid-1988) was TCE or TCA.
Defendant acknowledges the presence of TCE on its premises in trace quantities (e.g., as an ingredient in paints), the disposal of which was accounted for in accordance with governmental regulations (Claimant's Exhibit 13), which defendant maintains is the reason it continued to maintain in its files the MSDS for TCE. The defendant cannot account for the alleged presence of a drum (or drums) labelled TCE in the degreasing room in the week following August 4, 1992. The defendant did, however, monitor workplace safety, generally complied with governmental and manufacturers' guidelines, and maintained exposure levels to the substances in question (and others) well below toxic thresholds. The testimony of Robyn Frank, former Senior Environmental Engineer at the Lakeside Avenue plant, is deemed credible in

this regard because she is no longer employed by either GE or Martin-Marietta and has no ostensible partisan interest in this matter.

13. Following work on Friday afternoon, August 7, 1992, claimant drove with his girlfriend to his family's camp in Duxbury. They were joined later by claimant's mother and brother. Claimant acknowledges (and medical records document) a drinking problem some years prior, but claimant alleges that he had had nothing to drink for approximately two years (since his father's terminal illness and subsequent death). August 7, 1992 was particularly hot, however, and claimant stopped in Waterbury to pick up a six-pack of beer.

14. Claimant originally testified that he shared the beer with his girlfriend; she denied having even a single beer from the six-pack, however (both she and claimant's brother tended to abstain in the interest of discouraging claimant from drinking). Claimant later acknowledged that he probably consumed the entire six-pack by himself in the course of that afternoon and evening. There was also a supply of beer in the camp's cellar.

15. On Saturday, August 8, 1992, claimant drove to Barre on errands and returned to the camp by late morning or early afternoon. Claimant and the others did chores; claimant and his brother were clearing brush when claimant was observed by both his brother and his girlfriend to be on the ground having what they thought was a "convulsion" or "seizure."

16. The rescue squad was called and arrived at approximately 3:30 p.m. The rescue squad report includes a notation that claimant had "an attack like this" five years earlier but did not seek medical attention. Claimant was transported to Central Vermont Hospital where he arrived shortly after 4 p.m. (Claimant's Exhibit 11.)

17. CVH Emergency Room records reflect that claimant had consumed nothing but a cup of coffee all day. Claimant's brother reported that claimant had a "generous" amount of alcohol the previous day. Claimant was discharged shortly before 7 p.m.; his condition was assessed as hypoglycemia (low blood sugar) of questionable etiology with a syncopal episode (loss of consciousness). (Claimant's Exhibit 11.) Claimant was advised to follow up with his personal physician.

18. Claimant did not return to work on Monday, August 10, but his girlfriend (who also worked at GE) began her own investigation of the circumstances surrounding the chemical splash of August 4; she too found a drum marked "TCE" and made a handwritten copy of the label (Claimant's Exhibit 8). It is unclear when she and the union official who prepared Exhibit 1 discussed their findings, but at some later time when they returned to the degreasing area, the drum (or drums) labelled "TCE" were gone and could not be located anywhere on the premises. It is not known whether the drums had anything in them.

19. On Tuesday, August 11, 1992, claimant saw Dr. Saia who recorded additional complaints of feeling weak and tired, achiness in his arms, and headache, but their onset was reported to have been subsequent to the alleged seizure and discharge from the ER three days earlier. Claimant's complaints recorded over time by the various physicians who saw him included nausea, dizziness, vertigo, malaise, numbness and tingling in the extremities, arthralgia and palpitations.

20. Claimant's medical records document longstanding complaints beginning in 1986 of problems similar or identical to the alleged symptoms following the incident of August 4, 1992 (pain, numbness, and tingling in arms and legs; fatigue; dizziness and vertigo).

21. Dr. Saia was concerned about a suspected "seizure disorder," although he also noted that the alleged incident of August 8 could have been a "rum fit." Dr. Saia referred claimant for neurological studies; EEG's, MRI's, and other electrodiagnostic tests were all negative. None of claimant's alleged symptoms could be clinically confirmed.

22. GE lost the contract for production of the 50-calibre machine gun and the anticipated layoffs occurred. Dr. Saia's office notes of March 9, 1993 document claimant's acknowledged reluctance to return to work because he knew he would be laid off. When claimant was released to return to work, he was discharged by defendant effective August 7, 1992, his last day of work at GE prior to the alleged seizure of August 8.

23. Claimant began work later that year (1993) as a maintenance man at Essex High School. In January of 1994 claimant suffered another alleged "seizure"

(unwitnessed) and was treated at Fanny Allen Hospital.

24. Dr. Dissin testified that, in his medical opinion, claimant's "seizure" activity of August 8, 1992 was the result of alcohol withdrawal.

25. Dr. Dissin (claimant's neurologist) is not a specialist (and has never had specialized training) in the field of toxicology. Prior to seeing claimant, Dr. Dissin had no prior experience with patients exposed to chlorinated solvents. Dr. Dissin testified that, in his medical opinion, the symptoms first reported to Dr. Saia on August 11, 1992 (collectively termed peripheral neuropathy) were most likely the result of chemical exposure in the workplace. Dr. Dissin based this opinion on his review of documents prepared by Ashland Chemical, Inc. (Claimant's Exhibits 2, 3 & 4); the absence of any other known explanation; and his review of the acknowledged authoritative medical text on the subject, which nevertheless concludes that "[p]eripheral limb nerves have never been definitively implicated" in any studies concerning exposure to the chemical compound TCE (Defendant's Exhibit B). It is Dr. Dissin's further opinion that none of claimant's symptoms involving "peripheral neuropathy" were in any event disabling.

26. Dr. Mayes (Ph.D.) is a board certified toxicologist with specialized medical training in the field. Dr. Mayes testified that the former widespread use of TCE as a general anaesthetic (i.e., central nervous system depressant) is in theory and in practice incompatible with its alleged role as a stimulating agent capable of overexciting the CNS into a seizure-like response. Although the use of TCE as a general anaesthetic eventually fell into disfavor because of other adverse side-effects, the medical literature (including Claimant's Exhibits 5, 6 & 7) which suggests a possible connection between exposure to either TCE or TCA and the claimed injuries at issue here is speculative, anecdotal and falls far short of acceptance as proof in the scientific community. Claimant's injury as the result of his acute exposure to the degreaser on August 4, 1992 and his rapid recovery therefrom were predictable and consistent with medical knowledge, but the subsequently alleged effects from long-term chronic exposure as hypothesized are not.

CONCLUSIONS OF LAW

1. In workers' compensation cases, the claimant has the burden of establishing all the facts necessary to support the claim. Goodwin v. Fairbanks, Morse & Co., 123 Vt. 161 (1962). The claimant must demonstrate the scope and extent of the injuries and their causal relation to the work

injury. Egbert v. The Book Press, 144 Vt. 367 (1984). When the cause of an injury is obscure and beyond the ordinary understanding of laypersons, expert medical evidence must be produced to demonstrate the causal connection between the work event and the injury suffered; there must be created in the mind of the trier of fact something more than a possibility, suspicion or surmise that the incidents complained of were the cause of the injury and the inference from the facts proved must be the more probable hypothesis. Burton v. Holden & Martin Lumber Co., 112 Vt. 17 (1941).

2. There are two fatal flaws in claimant's factual case. The first is that not even his own doctor believes that the alleged seizure of August 8, 1992 was caused by either

(a) the brief, but extensive, acute topical exposure to a degreasing agent on August 4, 1992, or

(b) the long-term accumulation of degreasers or their metabolites in claimant's body.

The second is that the purely subjective complaints involving "peripheral neuropathy" (which were never objectively confirmed by his physicians or by extensive diagnostic tests), even if they did exist, were not, according to his own physician, disabling.

3. The Workers' Compensation Act is remedial in nature and must be given a liberal construction. Montgomery v. Brinver, 141 Vt. 461 (1983). A liberal construction, however, does not mean an unreasonable or unwarranted construction. Rothfarb v. Camp Awanee, Inc., 116 Vt. 172 (1950) (overruled on other grounds). In view of

(a) inconsistencies in claimant's reports concerning the onset of symptoms;

(b) pre-existing complaints so similar to those alleged after August 4, 1992;

(c) attempts to recharacterize by present testimony the contents of prior medical records;

(d) allegations of additional symptoms which could have been easily suggested

by documentation concerning the alleged suspect substances, all contemporaneous with or subsequent to

(e) an impending and eventually realized layoff--

it would be unreasonable to credit as conclusive the opinion of a physician without specialized training in toxicology that clinically unconfirmed symptoms should be deemed to have been caused by exposure to chemical substances in the workplace simply because no other explanation exists.

ORDER

Based on the foregoing findings and conclusions, the claim for benefits is DENIED.

DATED at Montpelier, Vermont this ____ day of May 1996.

_____
Mary S. Hooper
Commissioner