

## ARKANSAS COURT OF APPEALS

DIVISION III

No. CA09-1221

WESNER'S GRILL and COLUMBIA  
NATIONAL INSURANCE COMPANY  
APPELLANTS

V.

KENNETH CARPENTER  
APPELLEE

**Opinion Delivered** MAY 5, 2010

APPEAL FROM THE ARKANSAS  
WORKERS' COMPENSATION  
COMMISSION  
[NO. F704533]

AFFIRMED

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### JOSEPHINE LINKER HART, Judge

The Arkansas Workers' Compensation Commission found that appellee, Kenneth Carpenter, proved by a preponderance of the evidence that he suffered compensable injuries both on December 29, 2006, and on January 15, 2007, when he was exposed to a chemical cleanser used at his place of employment, Wesner's Grill. Appellants contend that substantial evidence did not support the Commission's finding, because there was no proof of a causal relationship between appellee's injuries and the chemical exposures. We affirm the Commission's decision.

According to the Commission's opinion, appellee credibly testified that on December 29, 2006, he was working in the dishwashing area of the restaurant while another employee was cleaning a plastic garbage tub by using a spray bottle of E-Z Kleen, a grill cleaner. A fan used to dry dishes blew E-Z Kleen vapor onto appellee. Appellee testified that the exposure caused his eyes and skin to burn. Appellee further testified that on January 15, 2007, the same

person was cleaning the grills with E-Z Kleen. As spray water was being used to rinse the grills, appellee was again exposed to E-Z Kleen and immediately felt persistent burning of his skin and eyes, and he coughed up blood. He also noted that the t-shirt he was wearing had holes burned into it.

The Commission further noted that the medical records showed that appellee was seen by his family physician on January 23, 2007, eight days after the second exposure, and was diagnosed as having a cough, congestion, difficulty breathing, fatigue, laryngitis, dermatitis, rash, and stomatitis. The Commission characterized the rash, dermatitis, and stomatitis as objective findings. Appellee related his symptoms to his workplace exposure to E-Z Kleen. At a return visit on February 19, 2007, appellee's family physician noted appellee had a red and irritated throat. A visit to the dentist on February 26, 2007, revealed severe tissue irritation of appellee's lips, cheek, tongue, and throat. The dentist noted that the tissues appeared to be severely chemically burned, with tissue sloughing present. On July 19, 2007, the family physician wrote that "in review of records, I do believe the time course and symptoms may represent a chemical induced presentation or reaction." The Commission found that appellee's exposures on December 29, 2006, and January 15, 2007, resulted in compensable injuries.

Appellants argue that appellee failed to prove a causal or temporal relationship between the alleged exposures and his complaints. In support of their argument, appellants generally assert that there was an absence of objective findings near in time to appellee's exposures to

E-Z Kleen. Further, appellants assert that appellee's testimony was not credible.

A compensable injury is defined as “[a]n accidental injury causing internal or external physical harm to the body . . . arising out of and in the course of employment and which requires medical services or results in disability or death,” and “[a]n injury is ‘accidental’ only if it is caused by a specific incident and is identifiable by time and place of occurrence.” Ark. Code Ann. § 11-9-102(4)(A)(i) (Supp. 2009). A compensable injury must be established by medical evidence supported by objective findings, which are findings that cannot come under the voluntary control of the patient. Ark. Code Ann. § 11-9-102(4)(D) and 16(a)(i) (Supp. 2009). In reviewing Commission decisions, this court views the evidence and all reasonable inferences deducible therefrom in the light most favorable to the Commission's findings and affirms the decision if it is supported by substantial evidence. *King v. Peopleworks*, 97 Ark. App. 105, 244 S.W.3d 729 (2006). It is the Commission's function to weigh the medical evidence and assess the credibility and weight to be afforded to any testimony. *Id.*

As the Commission found, appellee testified that he was exposed to E-Z Kleen. Following his exposure, appellee suffered from various symptoms, which he attributed to the exposure. Appellee was seen by a physician eight days after the second exposure, and the physician made objective findings. In finding causation, the Commission credited appellee's testimony and the physician's medical records. This was a factual determination for the Commission to make after weighing and interpreting the evidence and deciding matters of credibility, and we conclude that substantial evidence supports the Commission's decision.

Cite as 2010 Ark. App. 378

Affirmed.

PITTMAN and BAKER, JJ., agree.