



3. The extent of Claimant's entitlement to medical benefits.

### **CONTENTIONS OF THE PARTIES**

Claimant contends that she contracted occupational asthma as the result of being exposed to various cleaning agents used to disinfect Employer's hyperbaric chamber in an area where she worked as a secretary/technician. She seeks the appropriate medical and time loss benefits.

Defendants maintain that, according to their expert witness, it is "inconceivable" that the common, over-the-counter cleaning agents described by Claimant as being used in the facility could have caused occupational asthma and, therefore, Claimant's claim must fail.

### **EVIDENCE CONSIDERED**

The record in this matter consists of the following:

1. The testimony of Claimant, her daughter Amery Maughan, and her sister Sally Jones, and that of Jeffery Leland Hampsten, Employer's director of operations, taken at the hearing.
2. Claimant's Exhibits 1-7 admitted at the hearing.
3. Defendants' Exhibits 1-9 admitted at the hearing.
4. The post-hearing deposition of Emil J. Bardana, Jr., M.D., with 9 exhibits taken by Defendants on August 2, 2006, and that of James Christon, M.D., with 1 exhibit taken by Claimant also on August 2, 2006.

All objections taken during the above two depositions are overruled.

After having considered all the above evidence and the briefs of the parties, the Referee submits the following findings of fact and conclusions of law for review by the Commission.

### **FINDINGS OF FACT**

1. Claimant was 57 years of age at the time of the hearing and resided in Pocatello.

2. Employer operates and maintains a hyperbaric chamber leased to a hospital in Pocatello. The chamber enhances the healing process of non-healing wounds and carbon monoxide poisoning by allowing patients to absorb more oxygen than they normally would. The chamber can accommodate up to seven patients at a time and each treatment, or “dive,” lasts about two hours. In 2003, it was common for the chamber to treat three groups of patients a day, although four groups might be treated one or two times a month.

3. Before seeing patients in the morning, the area surrounding the chamber would be mopped. Then, after each dive, the chamber itself, as well as items outside the chamber that a patient may have come into contact with, such as wheelchairs, telephones, door knobs, and clothing bins, would also be disinfected. According to Claimant and the facilities’ operations director, Amphyl, Lysol, and Mr. Clean were the most commonly used cleaning agents. Claimant herself was not involved in the actual use of the cleaning agents, but was stationed at a desk within the immediate area where the cleaning took place for most of the workday. Each cleaning would take between 15 to 20 minutes.

4. Claimant began working for Employer in February 2001. Claimant testified that about May 11, 2003, she began experiencing “flu-like” symptoms while at work. She missed work on May 13<sup>th</sup> and 14<sup>th</sup>. She testified that at about that time, Employer and the hospital entered into a lease agreement for the use of the chamber and the patient loads increased; and, consequently, the cleaning.

5. Claimant did not seek medical attention until May 28<sup>th</sup> when she saw physician’s assistant Todd Gillespie, who was associated with Idaho Hyperbarics. However, Mr. Gillespie’s office note of May 28, 2003, does not mention anything about “flu-like” symptoms, it only mentions a follow-up visit for a previously diagnosed depression. The first medical record concerning “flu-like” symptoms is that of Christopher Shields, M.D., a physician at Idaho Hyperbarics,<sup>1</sup> dated June 21, 2003. His record of that date reveals that Claimant was

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<sup>1</sup> Some records refer to Shields as a physician’s assistant, others as a medical doctor.

complaining of chest congestion. Her eyes, ears, nose, and throat were all within normal limits on examination. She had been on Singulair for five weeks without change. Dr. Shields assessed environmentally induced asthma from the cleaning fluids used to clean the hyperbaric chamber area as she had no prior history of asthma. He continued her on Singulair and started her on Advair.

6. Claimant eventually came under the care of James Christon, M.D., a pulmonologist in Pocatello, who first saw Claimant on September 4, 2003. At that time, she was complaining of shortness of breath that she attributed to Amphyl, one of the cleaning agents used to disinfect the chamber and surrounding area. Her eyes, ears, nose, and throat were once again normal. Her lungs were clear with no obvious wheezes, rhonchi, or crackles. Dr. Christon questioned occupational asthma and recommended a high-resolution chest CT scan, ANA and rheumatoid factor tests as well as a methacholine challenge test. If the latter test was negative, then a diagnosis of occupational lung disease would be much less likely. Dr. Christon testified in his deposition that the results of the methacholine challenge test could be considered equivocal.

7. Claimant continued treating with Dr. Christon and on September 15, 2003, he took her off work for two weeks. After she improved, Dr. Christon recommended that Claimant not return to work in places where ammonia-based cleaning products were used. Claimant has not returned to work at Idaho Hyperbarics. At the time of the June 27, 2006, hearing, Claimant testified that she was back to 85% to 90% of normal.

### **DISCUSSION AND FURTHER FINDINGS**

As in industrial accident claims, an occupational disease claimant must prove a causal connection between the condition for which compensation is claimed and the occupation to a reasonable degree of medical probability. Langley v. State of Idaho, Special Indemnity Fund, 126 Idaho 781, 786, 890 P.2d 732, 737 (1995).

### **FINDINGS, CONCLUSIONS, AND RECOMMENDATION - 4**

Pertinent Idaho statutes in effect at the time of the alleged contraction of Claimant's occupational disease include Idaho Code §72-102(22) which defines occupational disease and related terms as follows:

(a) "Occupational disease" means a disease due to the nature of an employment in which the hazards of such disease actually exist, are characteristic of and peculiar to the trade, occupation, process, or employment, but shall not include psychological injuries, disorders or conditions unless the conditions set forth in section 72-451, Idaho Code, are met.

(b) "Contracted" and "incurred" when referring to an occupational disease, shall be deemed the equivalent of the term "arising out of and in the course of" employment.

(c) "Disablement," except in cases of silicosis, means the event of an employee's becoming actually and totally incapacitated because of an occupational disease from performing his work in the last occupation in which injuriously exposed to the hazards of such disease, and "disability" means the state of being so incapacitated.

Idaho Code §72-437 defines the right to compensation for an occupational disease:

When an employee of an employer suffers an occupational disease and is thereby disabled from performing his work in the last occupation in which he was injuriously exposed to the hazards of such disease, or dies as a result of such disease, and the disease was due to the nature of an occupation or process in which he was employed within the period previous to his disablement as hereinafter limited, the employee, or in case of his death, his dependents shall be entitled to compensation.

Lastly, Idaho Code §72-439 provides:

An employer shall not be liable for any compensation for an occupational disease unless such disease is actually incurred in the employer's employment.

8. Dr. Christon is of the opinion that Claimant has incurred occupational asthma from her exposure to ammonia-based cleaning fluids. There is some confusion in that regard, as Claimant has indicated that it was the Amphyll that was causing her problems, and Amphyll is not ammonia-based. Both Dr. Christon and Defendants' retained expert, Emil J. Bardana, Jr., M.D.,

agree that Lysol, Clorox, and, primarily, Amphyl, could not have caused occupational non-allergic asthma.<sup>2</sup> Dr. Christon mentioned the cleaning agent Bactosol in his deposition as being ammonium-based and apparently Claimant had given him a Material Safety Data Sheet (MSDS) for Bactosol as well as for Amphyl. Dr. Bardana was not aware that Bactosol was a suspected culprit and with good cause; Claimant has not mentioned that to anyone but Dr. Christon and he made no mention of that cleaner as a suspect in any of his medical records. In fact, Dr. Christon named the chemical Dimethyl Benzilonium Saccharate as the chemical “at work,” although he does not mention the product containing that chemical. Dr. Bardana claims that particular chemical does not exist.

9. As indicated, Defendants retained Dr. Bardana to conduct an IME. Dr. Bardana is a professor of medicine at the Oregon Health and Sciences University, Oregon’s only medical school. He is also currently employed half-time in the Division of Allergy and Clinical Immunology. He has written textbooks and numerous articles in his field, a list of which consumes 23 pages of his 43-page curriculum vitae. Exhibit 1 to Dr. Bardana’s Deposition. He has researched and written a textbook on occupational asthma that was, for a time, the “standard.” Dr. Bardana examined Claimant on February 18, 2004, reviewed her medical records, and conducted various pulmonary function tests. He authored a report dated March 1, 2004, and was deposed. He was provided MSDSs for Amphyl, Lysol, and Mr. Clean. He was not aware of the Bactosol. Dr. Bardana concluded that it would be “inconceivable” for Claimant to have contracted reactive airways dysfunction syndrome (RADS) from the three mentioned cleaning agents as none are allergens and there is no evidence that the agents have the

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<sup>2</sup> Both physicians also agree that Claimant is not allergic to the cleaning agents.

characteristics of a severe irritant of a corrosive. He opined that Claimant had either a possible vocal cord dysfunction or an idiopathic chemical intolerance, but not occupational asthma.

10. Dr. Christon is board-certified in Internal Medicine, Pulmonary Medicine, Critical Care Medicine, and Sleep Medicine. He was Claimant's treating physician from September 2003 until he left Pocatello in December 2005. He testified that Claimant had, at some time, brought him the MSDSs for Amphyl and Bactosol, although he also testified that he does not use MSDSs in any event. Dr. Christon opined that Claimant had an irritant-induced asthma secondary to an ammonium cleaning product that would be by inference the Bactosol, as the other products mentioned by Claimant do not contain ammonia.

11. The Referee gives the opinions expressed by Dr. Bardana greater weight than those of Dr. Christon for a number of reasons. Dr. Christon believed Claimant started to work at Employer's in May of 2003, rather than in 2001 and was unaware that she had worked there under virtually the same conditions cleaning-wise without problems until 2003. He also believed Claimant's problems stemmed from her cleaning the enclosed chamber itself, rather than others cleaning the surrounding area outside the chamber. He was also unaware that Claimant had been diagnosed with neurotic depression and stress just 10 days prior to her first reporting "flu-like" symptoms on May 10, 2003. He agreed with Dr. Bardana that stress can induce asthma. He also erroneously believed that, at some point, Claimant had experienced a "big exposure" and that her symptoms began at that point.

12. Dr. Bardana on the other hand, was more familiar with the facts that are consistent with the record. While he was justifiably unaware of the apparent use of Bactosol at some point in time, his overall analysis of the effect of a corrosive is persuasive. He testified as follows why Claimant did not have RADS:

Q. (By Mr. May): Isn't it a fact that that sometimes it's difficult to know about her pattern of symptoms when it's [been] a year since she's had significant ones?

A. Yeah, all people are fallible, you know, and they may not recall. And what you do there is to go to the records, sir. And people may not remember perfectly, but if they have RADS they usually are sick enough to go to the emergency room; if not, at least go to their practitioner.<sup>3</sup>

And in addition to the fact that she denied having any symptoms of the upper airways, she never had any recorded abnormalities on examination, repeatedly by Dr. Christon or by physician assistant Shields or Gillespie. Nobody ever recorded that. Certainly if you had significant enough corrosive - - in fact, you certainly would have, as a doctor, recorded the inflammation of the eyes, the nose, et cetera.<sup>4</sup>

And beyond that, she never had symptoms, objective findings of asthma. Her lungs were always clear as a bell even though she had symptoms, which again goes against the - - and that's part of the seven or eight reasons I expound in my report, that she just doesn't have that. She doesn't have occupational asthma.

Dr. Bardana Deposition, pp. 83-85.

13. In addition to Dr. Bardana's testimony, there are other observations that come into play regarding Claimant's alleged occupational asthma. First, no one knows when, or in what amounts, Bactosol was used. Mr. Hampsten testified that Bactosol was at some time used but was discontinued because it left a slick residue so they changed to a Clorox and water solution. No one who actually used or purchased the cleaning agents used in May 2003 was called as a witness to verify exactly what was used. Second, Claimant testified that she was in excellent health and shape before she became ill in May 2003. However, a medical record from Hugo E. Rodier, M.D., dated December 5, 2002, states that Claimant was complaining of fatigue and in a previous visit dated March 1, 2001, indicates "Fatigue continues. She had a significant stressful episode in her life 2 years ago. Since then she has been tired and deconditioned." Defendants' Exhibit 9, pp. 95-96. Third, and along the same vein, Claimant presented to PA

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<sup>3</sup> As previously indicated, the first medical record in evidence regarding Claimant's complaints of "flu-like" symptoms is dated June 21, 2003, over a month after her alleged exposure.

<sup>4</sup> The MSDS for Bactosol lists irritation to the eyes, skin and mucosa as being signs and symptoms of exposure.

Gillespie on April 30, 2003, complaining of stress: “Susan presents today with a lot of stress in her life [*sic*] has noted major anxiety lately [*sic*] she has hyperventilated. She has been having anxiety attacks lately and is not herself.” Defendants’ Exhibit 5, p. 58a. Both Drs. Christon and Bardana agree that stress plays a significant role in the inducement of asthma. Fourth, on a copy of a calendar entry made by and introduced into evidence by Claimant for the days April 23 and 24, 2003, she has written, “Sick flu @ work.” Claimant Exhibit 4, no page number. Yet, Claimant testified that it was not until May 10, 2003, that she first began to experience flu-like symptoms. Fifth, Claimant testified that she also has had reactions to chemicals in other places such as restaurants and grocery stores after May 2003, which lends credence to Dr. Bardana’s differential diagnosis of idiopathic chemical intolerance. Finally, Claimant worked from September 2001 until May 2003 in the same environment without symptoms. She testified that in February of 2003 the patient load increased due to the affiliation with the hospital and, ostensibly, the degree of cleaning increased. However, Mr. Hampsten testified that the hospital affiliation occurred in May of 2001 and that would not have changed the frequency of cleaning because the cleaning took place after each dive regardless of the number of patients involved and the facility could only accommodate three and rarely four dives a day.

14. While Claimant may firmly believe that her exposure to cleaning agents at Employer’s hyperbaric chamber facility caused her health problems, the objective medical evidence causes this Referee to conclude otherwise. The Referee finds that Claimant has failed to prove her exposure to cleaning agents in May of 2003, or any other time, at Idaho Hyperbarics constitutes a compensable occupational disease.

#### **CONCLUSIONS OF LAW**

1. Claimant has failed to prove she suffers from a compensable occupational disease.
2. The remaining issues are moot.

**RECOMMENDATION**

Based upon the foregoing Findings of Fact and Conclusions of Law, the Referee recommends that the Commission adopt such findings and conclusions as its own and issue an appropriate final order.

DATED this \_\_20<sup>th</sup>\_\_ day of \_\_December\_\_, 2006.

INDUSTRIAL COMMISSION

\_\_\_\_\_/s/\_\_\_\_\_  
Michael E. Powers, Referee

ATTEST:

\_\_\_\_\_/s/\_\_\_\_\_  
Assistant Commission Secretary

**CERTIFICATE OF SERVICE**

I hereby certify that on the \_\_5<sup>th</sup>\_\_ day of \_\_January\_\_, 2007, a true and correct copy of the **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** was served by regular United States Mail upon each of the following:

GREGORY C MAY  
PO BOX 370  
POCATELLO ID 83204

STEVEN R FULLER  
PO BOX 191  
PRESTON ID 83263

\_\_\_\_\_/s/\_\_\_\_\_

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**BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO**

SUSAN MAUGHAN,	)	
	)	
Claimant,	)	<b>IC 2003-012840</b>
	)	
v.	)	
	)	<b>ORDER</b>
IDAHO HYPERBARICS, INC.,	)	
	)	Filed January 5, 2007
Employer,	)	
	)	
and	)	
	)	
STATE INSURANCE FUND,	)	
	)	
Surety,	)	
	)	
Defendants.	)	
_____	)	

Pursuant to Idaho Code § 72-717, Referee Michael E. Powers submitted the record in the above-entitled matter, together with his proposed findings of fact and conclusions of law to the members of the Idaho Industrial Commission for their review. Each of the undersigned Commissioners has reviewed the record and the recommendation of the Referee. The Commission concurs with this recommendation. Therefore, the Commission approves, confirms, and adopts the Referee's proposed findings of fact and conclusions of law as its own.

Based upon the foregoing reasons, IT IS HEREBY ORDERED that:

1. Claimant has failed to prove she suffers from a compensable occupational disease.
2. The remaining issues are moot.

3. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all issues adjudicated.

DATED this \_\_5<sup>th</sup>\_\_ day of \_\_January\_\_, 2007.

INDUSTRIAL COMMISSION

\_\_\_\_/s/\_\_\_\_\_  
James F. Kile, Chairman

\_\_\_\_/s/\_\_\_\_\_  
R. D. Maynard, Commissioner

\_\_\_\_/s/\_\_\_\_\_  
Thomas E. Limbaugh, Commissioner

ATTEST:

\_\_\_\_/s/\_\_\_\_\_  
Assistant Commission Secretary

**CERTIFICATE OF SERVICE**

I hereby certify that on the \_\_5<sup>th</sup>\_\_ day of \_\_January\_\_, 2007, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following persons:

GREGORY C MAY  
PO BOX 370  
POCATELLO ID 83204

STEVEN R FULLER  
PO BOX 191  
PRESTON ID 83263

\_\_\_\_/s/\_\_\_\_\_

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