

**AFFIRMED IN PART, REVERSED
IN PART.**



2001-2428 (La.App. 1 Cir. 11/8/02)

Leonard HART

v.

RIVERSIDE MEDICAL CENTER.

No. 2001 CA 2428.

Court of Appeal of Louisiana,
First Circuit.

Nov. 8, 2002.

Claimant sought workers' compensation benefits, alleging that exposure to cleaning solutions during his employment caused asthma and chronic eye irritation. The Office of Workers' Compensation (OWC), District 6, Robert Varnado, Jr., J., dismissed claimant's suit with prejudice. Claimant appealed. The Court of Appeal, Ciaccio, J., serving by appointment, held that claimant failed to establish, by a reasonable probability, a causal link between his illnesses and his work-related duties.

Affirmed.

1. Workers' Compensation ⇌1509, 1552

Claimant failed to establish, by a reasonable probability, that a causal connection existed between his alleged prolonged exposure to chemicals at work and his asthma and chronic eye irritation, for purposes of workers' compensation; though claimant testified he was suspicious the exposure to chemicals at work were involved with his illnesses, he provided no medical evidence to sufficiently corroborate his allegation.

2. Workers' Compensation ⇌1421

To be entitled to workers' compensation benefits, a claimant must prove by a preponderance of the evidence that he suffers from an employment-related disease that was contracted during the course and scope of his employment as a result of work performed.

3. Workers' Compensation ⇌1495

The causal link between a claimant's illness and work-related duties, for purposes of workers' compensation, must be established by a reasonable probability.

4. Workers' Compensation ⇌1413

A claimant, in a workers' compensation proceeding, will fail in proving that he suffers from a disability related to an employment-related disease if he shows only a possibility that the employment caused the disease, or if the defense shows that other causes not related to the employment are just as likely to have caused the disease.

5. Appeal and Error ⇌1008.1(13)

Trial court's finding regarding causation is a factual determination reviewed under the manifest error standard.

6. Appeal and Error ⇌996, 1008.1(4)

Appellate court should not disturb a trial court's credibility determinations and reasonable inferences of fact upon review.

7. Workers' Compensation ⇌1939.3

If Office of Workers' Compensation's (OWC) finding was reasonable in light of the record viewed in its entirety, Court of Appeal may not reverse even if convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently.

8. Evidence ◊570

Expert testimony is to be weighed the same as any other evidence.

9. Evidence ◊570

A trial court may accept or reject in whole or in part the opinion expressed by an expert.

10. Evidence ◊570, 572

The importance to be placed upon expert testimony is largely dependent upon the expert's qualifications and the facts that form the basis of his opinion.

Wayne H. Carlton, New Orleans, Counsel for Plaintiff/Appellant Leonard Hart.

J. Douglas Sunseri, Bridgette D. Kaczmarek, Metairie, Counsel for Defendant/Appellee Riverside Medical Center.

Before: CARTER, C.J., WHIPPLE and CIACCIO, JJ.¹

1 CIACCIO, J.

Plaintiff Leonard Hart appeals an Office of Workers' Compensation ("OWC") judgment dismissing his complaint with prejudice. We affirm.

FACTS

In 1981, Leonard Hart began working at Riverside Medical Center ("Riverside") in the housekeeping department. In May 2000, Mr. Hart filed a disputed claim for compensation form with OWC, alleging that prolonged exposure to cleaning solutions during the course and scope of his employment with Riverside caused asthma

and chronic eye irritation. He alleged that he first experienced symptoms in 1995 or 1996, but did not seek treatment until 1998.

Riverside moved for summary judgment on the issue of causation and filed an exception raising the objection of prescription. OWC denied Riverside's summary judgment and deferred the prescription issue until after a full trial on the merits. After trial, OWC found that Mr. Hart failed to show "a causal connection between [his] employment and the occupational disease" and dismissed the complaint with prejudice. OWC denied Riverside's exception of prescription.

Mr. Hart now appeals, arguing that OWC erred in refusing to find a causal connection between his illness and his employment with Riverside. Riverside answered the appeal, contending that OWC erred in denying its exception raising the objection of prescription.

LAW AND ARGUMENT

[1-4] Mr. Hart has the burden of proving by a preponderance of the evidence that he suffers from an employment-related disease that was contracted during the course and scope of his employment as a result of work performed.² The plaintiff must establish a causal link between his illness and his work-related duties by a reasonable probability. A claimant will fail if he shows only a possibility that his employment caused the disease or if the defense shows that 1 other causes not related to the employment are just as likely to have caused the disease.³

1. The Honorable Philip C. Ciaccio, Judge (retired), Fourth Circuit Court of Appeal, is serving as judge *pro tempore* by special appointment of the Louisiana Supreme Court.

2. *King v. Stranco, Inc.*, 2000-2003 (La.App. 1 Cir. 11/9/01) 818 So.2d 48, 52.

3. *Id.*

[5–7] A trial court’s finding regarding causation is a factual determination reviewed under the manifest error standard.⁴ As an appellate court, we should not disturb a trial court’s credibility determinations and reasonable inferences of fact upon review. If OWC’s finding was reasonable in light of the record viewed in its entirety, we may not reverse even if convinced that had we been sitting as the trier of fact, we would have weighed the evidence differently.⁵

The workers’ compensation judge, in his reasons for judgment, considered the medical evidence and testimony before concluding that Hart failed to meet his burden of proving causation by a preponderance of the evidence:

Hart testified he was suspicious the exposure to chemicals at work were involved with his eye problems. However, no medical evidence sufficiently corroborated his allegation

Hart further claims exposure to various cleaning fluids used in furtherance of his job with [Riverside] caused him shortness of breath and respiratory/pulmonary problems. . . . Dr. [Mark] James treated Hart for several years and is significantly familiar with Hart’s history. Dr. James testified that Hart is a smoker of cigarettes. Other evidence illustrates Hart has smoked for many years in varying quantities.

Nevertheless, Dr. James stated that “It is my impression and still is that the chemicals were the primary, if not the main cause, for his pulmonary problems.” However, *Dr. James also stated that asthma could have been caused from a number of things including ciga-*

rette smoke, dust, chemical exposure, bacterial and viral infection, as well as genetics. Furthermore, Dr. James testified that Hart needs to stop smoking cigarettes and marijuana and straighten out his act and his behavior causing his disease to progress.

. . . .

Dr. [Steele] Rolston . . . testified Hart is genetically an allergic individual and his respiratory issues are caused by a combination of smoking, chemical exposure, molds, pollen, and environmental factors. . . .

The Defendant sought and obtained the opinion of Dr. William J. Nassetta, a specialist in the field of occupational medicine and internal medicine. . . . Dr. Nassetta testified that chemically induced exposure usually arises from a single overwhelming event. He went 4on to say . . . that Hart’s respiratory condition is not caused by chemical aggravation and further that chemicals at his work have not developed his respiratory problems. (Emphasis ours.)

[8–10] Louisiana law holds that expert testimony is to be weighed the same as any other evidence.⁶ In other words, the trial court has the discretion to accept or reject the expert’s opinion in whole or in part. The importance placed on an expert’s testimony is largely dependent upon his qualifications and the facts that form the basis of his opinion.⁷

Dr. Nassetta testified that chemically-induced asthma, known as Reactive Airways Dysfunction (“RADS”), generally results from a “single big blast” of chemicals. The effect is immediate, rather than a

4. *Short v. Plantation Management Corp.*, 99–0899 (La.App. 1 Cir. 12/27/00), 781 So.2d 46, 55.

5. *Id.*

6. *Shows v. Shoney’s, Inc.*, 98–1254 (La.App. 1 Cir. 7/29/99), 738 So.2d 724, 737.

7. *Id.*

gradual result of years of low level exposure. Medical testimony established that several other causes not related to the employment were just as likely to have caused the disease.

After reviewing the record in its entirety, we cannot say that OWC was manifestly erroneous or clearly wrong in concluding that Mr. Hart failed to establish, by a reasonable probability, a causal link between his illness and his work-related duties. In fact, Mr. Hart failed because he was able to show only a possibility that his employment caused the disease. This assignment of error is without merit.

Because we find that Mr. Hart failed to prove the causation element, thereby nullifying his claim against Riverside, we need not address the prescription issue.

CONCLUSION

For the reasons noted above, we hereby affirm the trial court's judgment in favor of defendant, dismissing Mr. Hart's suit with prejudice. Costs of this appeal are assessed to appellant, Leonard Hart.

AFFIRMED. ANSWER TO APPEAL DENIED.



2001-2550 (La.App. 1 Cir. 11/8/02)

THOMPSON PACKERS, INC.

v.

George C. DOWNEY.

No. 2001 CA 2550.

Court of Appeal of Louisiana,
First Circuit.

Nov. 8, 2002.

Former employer appealed judgment rendered by the Office of Workers' Com-

pensation (OWC), District 6, Robert Varnado, Jr., J., dismissing its claim against former employee for workers' compensation fraud. Employer appealed. The Court of Appeal, Ciaccio, J., serving by appointment, held that OWC was not clearly wrong in finding that employer failed to prove claimant made fraudulent claim.

Affirmed.

1. Workers' Compensation ⇐1174

In a non-jury case, the appropriate standard for Office of Workers' Compensation's (OWC) determination of a motion to dismiss is whether the plaintiff has presented sufficient evidence on its case-in-chief to establish its claim by a preponderance of the evidence.

2. Workers' Compensation ⇐1174

On a motion for involuntary dismissal brought at the close of plaintiff's case-in-chief, Office of Workers' Compensation (OWC) is only required to weigh and evaluate the evidence presented to that point and grant the dismissal if plaintiff has failed to establish his claim by a preponderance of the evidence.

3. Evidence ⇐598(1)

Proof by a preponderance of evidence simply means that, taking evidence as a whole, the fact or cause sought to be proved is more probable than not.

4. Appeal and Error ⇐996, 1008.1(4)

Appellate court should not disturb a trial court's credibility determinations and reasonable inferences of fact upon review.

5. Workers' Compensation ⇐1598

Statute governing the forfeiture of workers' compensation benefits on the basis of employee fraud authorizes forfeiture