

Hearing Report**REDACTED**

CLAIMANT: (present)
CLAIMANT'S ATTORNEY: David Pavlik
HEARING OFFICER: Debra McKinney

Date/Time of Hearing: Tuesday, April 19, 1994; 10:00 a.m.
Location of Hearing: Akron, Ohio
Issue: Allowance of claim

This will confirm my attendance at the above captioned hearing. The claimant was present and represented by his attorney, David Pavlik. District Hearing Officer Debra McKinney heard the arguments presented.

Although this was our objection to the allowance of this claim, Mr. Pavlik opened the hearing with his remarks about Sherwin-Williams not complying with his request for MSDS and OSHA information or information about the chemicals the claimant alleges he has been exposed to. No evidence in support of their claim was presented or submitted at today's hearing.

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I submitted the attached information to the Hearing Officer and Mr. Pavlik and pointed out that according to R.C. 4123.651(c), the claimant is required to execute a release upon request by the employer. and his attorney have refused to cooperate with our request and therefore, we could not obtain sufficient medical information to have an IME performed in defense of our position. I pointed out that we did obtain an emergency room report wherein the claimant stated that he has a history of asthma. I also pointed out that this claimant was smoking 1 or more pack(s) of cigarettes per day and was also an alcohol and drug abuser. I attempted to make it very clear that medical records are an essential part of determining exactly what caused his condition of reactive airways disease. I asked that the Hearing Officer order to sign the releases I had with me and reset the hearing in order to give us proper time to obtain necessary information and have an IME performed. Ms. McKinney said she would take the question of reset under advisement and wanted to hear the arguments for and against allowance of this claim.

Mr. Pavlik once again opened the arguments. He had no medical evidence to present. Ms. McKinney questioned the claimant about his condition. answered that his condition began approximately one and a half years ago and that he has been seeing a Dr. Kaplan (his HMO doctor). Dr. Kaplan referred him to Dr. Dillard, a pulmonary specialist, in August, 1993. showed the DHO a peak flow meter - daily record chart and pointed to the changes in his breathing patterns when he was off work. When asked about

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his job duties, stated that he works by the production lines where they manufacture paint. He also stated that he has never been supplied with a respirator. In the past (approximately 6 years ago) he worked in the can piercing area and has also worked in the area where they wash solvent off cans. He was not sure how many years he has been in his present position. When asked about the asthma, he stated that he has signs of asthma that started a couple years ago. It started with sinus problems, burning in his nose and is worse in the summer. He also answered that he has never had problems with odors prior to 2 years ago.

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I pointed out that a copy of job description is in the material I submitted to the state file. I also pointed out that we requested a narrative from Dr. Dillard with regard to his diagnosis of non occupational airways disease and then his statement that there is a direct relationship between the claimant's condition and his work. Mr. Pavlik stated that the Dr. cannot answer our request because he does not have the MSDS information. I argued that if the doctor could not support his position without MSDS information, he had no basis for his opinion that there is a relationship. I also pointed out that on the fee bill from MedNet, box number ten (10) asks if the condition is work related and the box marked "no" is checked. I also mentioned that the ICD-9 codes represent asthma and respiratory factors brought on by mental factors. Finally, I addressed the memo from Rus Mahoney which states the the claimant is not exposed to fumes and that he (Rus) spoke directly with Dr. Dillard who advised that apparent sensitivity is not work related and that the original diagnosis was based on erroneous information from the claimant. The claimant's attorney became outraged at this and stated that an agent of Sherwin-Williams does not have the right to contact a claimant's doctor requesting information. I answered that Mr. Mahoney is the Personnel Manager, and as such, he must contact the physician of record when one of his employees is out on disability for a period of time and especially in light of the allegations.

I once again asked that the claimant sign the authorizations to release medical information and the DHO did support me by stating that the statute does require them to sign it and submit it to us. Once again, Mr. Pavlik refused and stated that he would not allow medical information to be released until we release information regarding chemicals used in the plant. The claimant alleged that OSHA has not been in to inspect the plant since 1984. Initially I argued that if OSHA has not been there, that means they have no basis to come in and inspect. I also asked the claimant what type of position he held that he would be aware of OSHA's inspections.

I once again asked the Hearing Officer to consider our request for reset so that we could have the proper defense. She stated that she would take the matter under advisement and would issue an order within one week.

If this claim is allowed, I will file an appeal to the ICO and will attempt to have the ICO subpoena the claimant's medical records and history so that we can have an IME and so that all records will be reviewed in order to determine exactly what the cause of breathing problems are. I will also contact Rus Mahoney if another hearing is necessary and ask that he be present to testify.

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