

WORKMEN'S COMPENSATION BOARD
STATE OF NEW YORK

Before a Panel of three Members

Present: Alphonse P. Guardino
Frederic E. Hammer
Frank A. Gugino

on April 12, 1950

In the Matter of: Henry J. Miller
vs
Shell Oil Company

WCB Case No. 54204741

On application of Claimant's Attorney

MEMORANDUM OF DECISION

Under date of February 23, 1950 the Referee found that the claimant does not have any disease related either directly or indirectly to his occupation while in the employment of the Shell Oil Company. The claimant's attorney is objecting to the disallowance of the claim on the ground that the evidence indicates that the claimant is suffering from an occupational disease within the meaning of the law. The attorney contends that the claimant contracted lead poisoning as a result of his occupation.

The record discloses that the claimant was employed as a driver salesman for the Shell Oil Company for 9-1/2 years. His duties involving delivering gasoline and oil in tank trucks holding from 2100 to 3600 gallons of gasoline. The gasoline is brought to the yard at Milton by boat and unloaded into storage tanks. The trucks were filled in the yard from 3 to 5 times a day and most of the time claimant would fill the truck with gasoline himself. Usually the trucks were loaded from the storage tanks but about once or twice a week they were filled from the surplus in the unloading hose from the boat. In filling the trucks from the boat the gasoline would sometimes spill all over the claimant's clothes and he would be saturated with gasoline. He would remain in those clothes all day. When the trucks were loaded from the storage tank they were loaded on a platform covered with a canopy. The claimant would open the dome on top of the truck and look into the compartment of the tank to see if it was clean or empty. The tank contains fumes from the gasoline and these fumes would escape when the dome was opened. Claimant would then proceed to put the spigot from the hose of the loading tank into the dome of the compartment of the truck. The spigot was smaller than the dome opening and there was a space through which the fumes escaped. If there was remaining gasoline in the truck at the time he proceeded to fill same the nearer the top the gasoline came the more fumes escaped. About fifty gallons a minute were pumped into the tank of the truck. Claimant also worked long hours, sometimes 16 or 17 hours a day. About 2 or 3 months before September 1942 claimant began to develop fainting spells. In September 1942 he was unable to continue his work because he felt sick and was afraid to drive the heavy truck because of the fainting spells. In September 1942 he told his foreman, Clinton Buckner, that he was sick and could not proceed with his work. Claimant has lost considerable weight, suffers from dyspnea, and has pain in his stomach. The evidence further discloses that ethyl lead and tetra ethyl is used in gasoline and that tetra ethyl in its fluid form is poisonous. The medical evidence indicates various diagnoses were made as to the claimant's

KE 0004661

ition, but indicates that claimant is primarily suffering poisoning due to the prolonged absorption of lead in the se of his employment.

r a review of the record the Board believes and holds that preponderance of probative evidence adduced sustains a ing that claimant is suffering from lead poisoning due to sure to ethyl lead, tetra ethyl and gasoline fumes while he course of his employment and therefore claimant sustained occupational disease within the meaning of the law.

rdingly, that part of the referee's decision of February 23, disallowing the claim is REVERSED and the case is restored he referee's calendar to consider an award for disability.

concur.

Alphonse P. Guardino

Frederic E. Hammer

Frank A. Gugino

KE

4662