

THE HARSHAW CHEMICAL COMPANY

1000 HARVARD AVE.
CLEVELAND, OHIO
721-8300

August 13, 1965

Kettering Laboratory
University of Cincinnati
School of Medicine
Eden & Bethesda Rd.
Cincinnati, Ohio

Attention: Dr. R. Kehoe

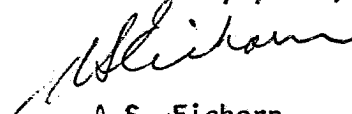
Dear Dr. Kehoe:

You will recall that in the latter part of 1964, I was in contact with you about the lead poisoning industrial claim filed by a former employee of our Louisville, Kentucky Plant. In the conversation, you agreed to act for us as a consultant about this claim.

Mr. R.I. McIntosh, attorney for our insurance carrier, contacted you, and you then reviewed the claim and answered questions about it. Your deposition was then filed as part of our contestation of the claim.

Only a few weeks ago we were advised that the hearing had been held this past May, and that the decision was made in favor of the claimant. For your interest, I am enclosing a copy of the decision, as I think that you will be interested in reading it. I have read your deposition thoroughly, and that, plus other pertinent data show that the claimant had later exposure after our employment; all of this seems to be disregarded. Our attorney has recommended that we do not ask for a rehearing, as it would be a useless effort. Your contribution was excellent, and Harshaw wishes to thank you for your assistance.

Sincerely yours,



A.S. Eichorn
Director of Health,
Safety & Hygiene

ASE/jz

Enclosure

KE 0015340

PLAINTIFF

VS.

OPINION AND AWARD

~~APRIL 26, 1965~~
May 17,

KENTUCKY COLOR DIVISION
THE HARSHAW CHEMICAL COMPANY

DEFENDANT

Hon. John E. Wise
Louisville, Kentucky

Hon. R. I. McIntosh
Louisville, Kentucky

ATTORNEY FOR PLAINTIFF

ATTORNEY FOR DEFENDANT

OPINION BY ALVIN B. TRIGG, BOARD MEMBER

The plaintiff has asserted a claim of permanent and total disability resulting from lead poisoning incurred while he was employed by the defendant chemical company. It is conceded that plaintiff's employment with this named employer terminated in 1957 -- that he did not learn of the lead poisoning condition in his body until late October or early November of 1963 -- that this application for benefits was filed on April 3, 1964.

Defendant has interposed a special plea of limitations under K.R.S. 342.316 together with a general denial that claimant's disability, if any, is attributable to employment exposure with the named defendant. Specifically defendant contends that subsequent to 1957 plaintiff has engaged in work for other companies with attendant exposure of a nature capable of producing the asserted lead poisoning condition and that one or more of these companies should be liable for any benefits accorded this plaintiff.

Obviously, if such subsequent exposure capable of producing this condition has occurred in other employment, the plaintiff's cause of action against this named defendant must fail. Consequently, we have

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to have initially reviewed the record with care and are unable to find testimony persuasive of this contention by the defendant. In fact, the affirmative evidence strongly militates to the conclusion which we have reached -- that the last exposure to lead-containing chemicals did, in fact, occur during the period of employment exposure with this defendant ending in 1957. Having achieved this factual determination, the law controlling of the various issues, including limitations and liability is that contained in the 1956 Act.

Although the defendant maintains, with some supporting medical proof, that any lead poison introduced into the plaintiff's body as far back as 1957 would have been excreted long before 1963 when the diagnosis was reached and announced, - yet the stubborn fact persists that this man does have lead poisoning and there is no other persuasive evidence (beyond surmise) of later exposure; this, coupled with contra-medical opinion that the condition is attributable to such initial exposure and the uncontroverted fact that lead poisoning is a slowly progressing condition which may require years before culminating in recognizable disability, seems to validate the plaintiff's contention of last exposure source.

The extent of disability is a more troublesome question and, of course, complicated by the fact that claimant did not know that he had lead poisoning and worked for other employers, although the evidence indicates that he has had various ailments which caused him pain, discomfort and some loss of time from work on a fairly frequent basis -- which in perspective clearly appear manifestations of the later diagnosed condition of lead poisoning. However, in considering his subsequent work history and the lay and medical testimony adduced of record it does not appear that except for a short period of

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conclusion which we have reached -- that the last exposure to lead-containing chemicals did, in fact, occur during the period of employment exposure with this defendant ending in 1957. Having achieved this factual determination, the law controlling of the various issues, including limitations and liability is that contained in the 1953 Act.

Although the defendant maintains, with some supporting medical proof, that any lead poison introduced into the plaintiff's body as far back as 1957 would have been excreted long before 1963 when the diagnosis was reached and announced, - yet the stubborn fact persists that this man does have lead poisoning and there is no other persuasive evidence (beyond surmise) of later exposure; this, coupled with contra-medical opinion that the condition is attributable to such initial exposure and the uncontroverted fact that lead poisoning is a slowly progressing condition which may require years before culminating in recognizable disability, seems to validate the plaintiff's contention of last exposure source.

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The remaining issues and defenses we conceive to be governed by the existent 1936 Act and are covered in findings of fact and conclusions of law which we here reach.

FINDINGS OF FACT

1. As stipulated by the parties and noted in the foregoing Opinion.

2. That the plaintiff incurred lead poisoning arising out of and in the course of his employment by the defendant company, culminating in a ten (10%) per cent permanent partial disability to the body as a whole on 10th day of August, 1957, for which he is entitled to benefits not to exceed four hundred (400) weeks excepting that for the period commencing October 24, 1963 and ending November 7, 1963 and a further period commencing November 15, 1963 and ending November 22, 1963 for which periods of hospitalization this claimant shall receive temporary total disability benefits.

3. That subsequent to the aforesaid lead exposure in the employment of this defendant, the plaintiff was not thereafter exposed to lead-containing materials or chemicals capable of producing the asserted disability of lead poisoning.

RULINGS OF LAW

1. As stipulated by the parties and noted in the foregoing Opinion.

2. That although claimant's disability was not diagnosed until 1963 as lead poisoning, the evidence reflects that the disability has existed since last injurious exposure and termination of employment with this defendant to the extent of ten (10%) per cent to the body as a whole.

3. That the 1936 Workmen's Compensation Act is controlling of this claim and the defenses thereto, including of notice and

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4. That practicable notice of this condition was afforded the defendant. *Inland Steel Company vs. Mosby (Ky.)* 355 S. W. 2d 651; *Mary Helen Coal Corporation vs. Chitwood (Ky.)* 351 S. W. 2d 167.

5. That the plaintiff was exposed to the hazards of the disease in his employment for at least two years before his disability. The controlling 1956 Act only required two years exposure, which was here present. The provision that such exposure be immediately next before the disability was not legislated until 1960.

6. That the provision for filing such a claim within five years from the last injurious exposure was not inserted in our law until the March 22, 1962 Act.

AWARD

It is therefore Ordered and Adjudged by the Full Board as follows:

1. That the special defenses plead by the defendant are overruled.

2. That the plaintiff recover of the defendant as ten (10%) per cent permanent partial disability to the body as a whole the sum of Two (\$2.60) Dollars and Sixty Cents per week for a period not to exceed four hundred (400) weeks in the aggregate from August 10, 1957, excepting that plaintiff shall recover temporary total disability of Thirty Two (\$32.00) Dollars per week for the two intermittent periods commencing October 24, 1963 and ending November 7, 1963 and commencing November 15, 1963 and ending November 22, 1963 -- which temporary payments shall be included in the four hundred (400) week aggregate benefits herein allowed; said partial disability payment shall be increased to

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5. That the plaintiff was exposed to the hazards of the disease in his employment for at least two years before his disability. The controlling 1956 Act only required two years exposure, which was here present. The provision that such exposure be immediately next before the disability was not legislated until 1960.

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hospital expenditures not to exceed Twenty Five Hundred (\$2500.00)
Dollars and the defendant is credited with any weekly benefit
payments and/or medical and hospital benefit payments heretofore
made.

FULL BOARD CONCURRING

RE 0015347