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CLAIM NO. 12943-162

(DUPLICATE)

9418286



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CECIL CUNNINGHAM

vs.

MONSANTO CHEMICAL COMPANY

CLAIM NO. 12943-162

(DUPLICATE)

9418286

I N D E X

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Cecil Cunningham

Charleston, W. Va.

vs.

June 29, 1958

Monsanto Chemical Company

Claim No. 12943-162

This claim came on again to be heard on this 29th day of June, 1958, at the office of the Commissioner, in the City of Charleston, Kanawha County, pursuant to notice duly given by the Commissioner to and received by all interested parties.

APPEARANCES:

For the Commissioner,

R. J. Canterbury, Esq.,
Trial Examiner.

For the Claimant,

By counsel James G. Jeter,
Jr., Esq., Attorney at Law,
Charleston, West Virginia.

For the Employer,

By counsel Paul N. Bowles,
Esq., Attorney at Law,
Charleston, West Virginia.

Dr. O'Dell - Cross.

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Thereupon came DR. RICHARD M. O'DELL,
a witness of lawful age called for the purpose
of cross examination upon testimony heretofore given
herein, who, after having been first duly sworn
according to law, testified as follows:

CROSS EXAMINATION:

By Mr. Jeter.

Q - Dr. O'Dell, referring to page 64 of the hearing
held on April 13, 1956, you stated that
from your examination and the reading of
Dr. Westmann's report that you found no
permanent partial disability to the claim-
ant as result of his exposure to chemicals
at Monsanto Chemical Company; do you have
that before you?

A - That is not on page 64.

Q - 64 and 65?

A - Yes, sir, that's correct.

Q - With reference to a skin disability, you were not

Dr. O'Dell - Cross:

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passing on that, or including that?

A - No, sir. I'll have to retract my statement in that manner, because in my own mind I am convinced that the skin condition is related to the chemical exposure. I found no other bodily manifestations or organic diseases that I am able to relate to the chemical exposure.

Q - In that connection, any nervous disorders or psychological effects which the exposure had on the claimant you did not intend to include that, either, in your statement that there was no permanent partial disability?

A - I have no way of knowing that there were any nervous disorders or psychological changes secondary to the chemical exposure.

Q - Was it your effort to connect up the disorders of this claimant with the exposure?

A - It was, if there was anything to be found, and I

might state at this time that actually from a financial standpoint it would actually be to my advantage to find something wrong with these men, because while Monsanto asked me to go over them for them, to see what I could find, I do a tremendous amount of work from this area, including many of these men, referred work and consultations, and I certainly would not go out of my way to antagonize any of them, and if I could find anything I thought could be connected with their chemical exposure I would be the first one to say so.

Q - However, as to treatment for the skin disorders or the nervous condition, you refer them to some other doctor rather than do them yourself as to treatment?

A - As far as treating the skin disorder, I would refer them to a skin specialist. As far

Dr. O'Dell - Cross.

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as treating any nervous disorder that might arise, that is a common condition we see in medical practice all the time, that is, the problem of nervous tension, aches, pains, weakness, which is a part of internal medicine, and not dealing now with psychiatric treatment, but with medical treatment and what we call psychosomatic treatment, not attempting to delineate psychiatric manifestations. Psychiatric manifestations, if I felt those were present, I would refer them to a psychiatrist.

MR. JETER:

That's all.

RE-DIRECT EXAMINATION:

By Mr. Bowles.

Q - Is there anything further you would like to elab-

Dr. O'Dell - R_g-Direct.

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That may be admitted, if the Commissioner wants it in the record. We have no objection to it.

MR. BOWLES:

I so move it be admitted, the testimony and the letters.

MR. CANTERBURY:

Admitted.

FURTHER DEPOIMENT SAITH NOT

- - -

Thereupon came DR. R. H. WESTMANE, witness recalled for the purpose of cross examination upon testimony heretofore entered herein, who, after having been first duly sworn according to law, testified as follows:

CROSS EXAMINATION:

By Mr. Jeter.

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Dr. Hestmann - Cross.

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Q - Dr. Hestmann, I believe your testimony given at the hearing which was held on this claim on April 13, 1956, stated in effect that you found no permanent partial disability existing after you had examined the claimant and probably had conferences with Dr. O'Dell?

A - I don't think we were asked to give that opinion, were we, Mr. Bowles, I mean for Monsanto?

MR. BOWLES:

I may have asked you in the course of your direct examination. I'm not sure.

EXAMINATION RESUMED BY MR. JETER:

Q - I will present that in this way, then. Were you able in connection with your examination of this claimant and with a conference with Dr. O'Dell to find that Mr. Cunningham, the claimant in this case, had any permanent partial disability resulting from the ex-

Dr. Hestmann - Cross.

-18-

pressure?

A - None that I could detect.

Q - Have you considered at all the skin disability which this man told you he had?

A - I'm not sure. I think I make a statement that there are multiple areas of old, small, one to three millimeters, and one millimeter is almost insignificant, scars, said to be the site of the "boils", and I did not think--I mean if I were evaluating this thing from my field of internal medicine that to me would not present a disability. That is an internist's opinion and not a dermatological opinion.

Q - Could you find that this man presented to you any complaints of nervous disorders?

A - Sure, most of the people have. I mean their first symptom is nervousness.

Q - Have you considered whether or not that is a dis-

ability as a result of the exposure?

A - I have.

Q - And what is your conclusion?

A - That I have no way of relating his nervous status prior to the explosion except his statement, and I don't think that is an adequate basis on which to make an adequate comparison.

Q - I believe in another case you stated something about writing an article in regard to the effect that certain conditions would have on coal miners. That article I have not read, but I gather from it that that took up a psychological disorder that might follow after certain events in the coal mine?

A - No, no attempt was made to correlate events to the presence or absence of the disorder. The study was for the sole purpose of highlighting the fact that coal miners as a group appeared to have whatever organically

Dr. Westmann - Cross.

-20-

they have, tuberculosis, heart disease and so on. They also have a very high incidence of emotional or psychological disease, and the figure, I believe, was 92 percent of 151 cases, which is quite high, and I think the testimony will bear out, I think you asked me at that time, or Dr. Halloran, if an explosion did it produce, and an accident, had it produced it, and no attempt was made in evaluating these cases, and the study was my own undertaking and has not been supported by any grants from industry or from anybody else, was solely for one purpose, to find out did psychoneuroses exist in coal miners; and, if so, to what degree, and that's what the article attempted from my point of view to establish; that and only that.

Q - Did I understand you to say that quite a few of these men you have examined do display

Dr. Westmann - Cross.

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this nervous condition?

A - That's the most common thing I find in them, except for maybe the skin condition.

Q - Are you willing to attribute that condition to the exposure, not only in this case but in the others and considering it altogether?

A - The 140 coal miners have not been exposed to Monsanto fumes. I cannot relate it, no, sir.

Q - Do you consider that a disability, regardless of what the cause of it was?

A - These coal miners are not disabled, and some of them are more psychoneurotic than these people.

Q - With reference to the Monsanto people you have examined, do you consider that the nervous condition you mentioned a disability in itself, regardless of the cause?

A - Well, I think a lot of people that have more serious nervous disorders than they are

still able to function. I don't think I can give you a completely satisfactory answer to that. I think this group of men are highly suggestible and I think that some of them have been done irreparable harm by, to me, unwarranted testimony in this room or similar rooms in which multiple sclerosis was thrown in their face with completely unfounded theories. I think it is vicious and some other things I better not say.

Q - That experience to which you have reference happened after you had examined these men, I am talking about the condition of these men at the time you examined them. You said you found this nervous state, and I am asking you whether or not that is a disability in itself?

A - That depends entirely upon the degree, and I don't know what your compensation ruling is on the

degrees of disability. I can speak with some authority on what the degrees of disability are for social security benefits, because I am a consultant for that division here, but as to what the attitude of the public law of the state is with regard to that I don't know. I don't know, and I'm sure you will have pretty nearly as many different things from physicians as you have physicians to the fact this guy is completely disabled and this guy has no disability.

Q - What is your opinion as to Mr. Cunningham, as to the degree of disability?

A - I think he has no degree. I think he has a moderately severe psychoneurosis, cause not known, when it developed, not known.

Q - Regardless of the cause, do you consider that a disability?

A - Well, as he makes it a disability, yes. If he

Dr. Westmann - Cross.

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says, "My leg is paralyzed" and refuses to move it, I think he is disabled, and I have patients in that situation.

Q - In Mr. Cunningham's case did you find that he was malingering or untruthful?

A - This is not a malingering situation. This is an emotional disorder. It is not an insanity. It is what Dr. O'Dell and I see in our office four times or 10 times as often as we see organic disease; and we see in our office people who are able to function and hold down much more responsible jobs than these people. Artists, by the very nature of their work, are very frequently highly neurotic, but they are still able to function so far as I am concerned, and neurosis in itself and by itself is not disabling. It is disabling as the person himself makes it disabling. It is as disabling as the physician who cares for him saying, "You are going to

Dr. Nestmann - Cross.

-25-

develop multiple sclerosis because of hyperinsulinism", which he doesn't have. These people are highly suggestible and what you have to tell them has to be very carefully weighed.

Q - What information came before them, if it did, regarding multiple sclerosis came up after you had examined Mr. Cunningham, did it not?

A - I don't know the day. I don't know it even came up in the case of Mr. Cunningham or not.

Q - I don't either.

A - I remember that several of these people were threatened with multiple sclerosis, from the reading I have done of these reports.

MR. BOWLES:

I think the testimony where that inference was made, Mr. Jeter, was the original testimony of Dr. Halloran, when he went through all of these cases.

9418311

Dr. Westmann - Cross.

-26-

MR. JETER:

It was on the Haning case.

MR. BOWLES:

No, before Dr. O'Dell and Dr. Westmann started examination of these men, when the Special Medical Board testified and then Dr. Halloran testified. I don't know when that inference was made, but I recall it was made in several of them.

EXAMINATION RESUMED BY MR. JETER:

Q - Doctor, I really intended to make this a short examination. As I understand it, you do recognize there are two disabilities, one is from the skin standpoint?

A - There is not from an internist's point of view.

Q - At the other is the fact you found these men in a nervous state and you don't know whether to explain that on the exposure or something else, is that about correct?

Dr. Westmann - Cross.

-27-

A - That's correct, we have no way of knowing the cause of this and we have no knowledge of how nervous they were before the exposure, and their testimony on this sort of thing is completely inadequate medically to make that differentiation. Of course this is a dramatic thing and everything that has happened since that time. Whether it is due to that exposure or not, well the 151 coal miners had no such exposure and 92 percent of them had the same type of illness these fellows had, and on the basis of that to me the evidence would have to prove there is a causal relationship, and I know of no such work.

Q - Doctor, from some of your testimony I probably improperly drew the conclusion that you didn't consider a person disabled unless he was totally disabled; am I correct in that?

9418313

Dr. Neumann - Cross.

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A - I am satisfied that various people operate under various degrees of disability and that the rating of partial disability is a hard job.

Q - Do you refuse to rate a person unless he is totally disabled?

A - I have had very little experience compensation-wise, and that's the only place this sort of thing comes up as to partial disability. I have had a lot more experience in rating and determining total disability with reference to my work upstairs with social security. I believe I am right in that I have recommended at various times to a Compensation Commissioner varying degrees of disability. I believe that's correct.

Q - Considering that these men have this skin disability, would you give that any degree of disability rating?

Dr. Westmann - Cross.

-29-

A - I told you before this afternoon from an internist's point of view that is not disabling.

Q - Whose point of view could be used or adopted by the Commissioner on that disability?

A - I believe a certified dermatologist should determine that.

Q - And on the nerve disorder that we have mentioned, that is probably not the correct name, who would be the best to give that a degree of permanent partial disability rating?

A - Well, you can get opinions from various sources. I think internists are called upon to give that not infrequently.

Q - Could you give it in this case, looking at the disability solely and not its cause?

A - I don't think that the examination that I have made would permit me to rate disability. I have recognized it, but I don't see how

Dr. Westmann - Cross.

-30-

I could rate disability from this. I think that would take some tests which were not available to me at that particular time. I don't think I could rate it.

Q - Then you would say that is disability, but from what connections you have with the case you could not rate it?

A - Well, you are getting into a quite complicated realm. You are getting into a situation where a guy on DPA with less trouble than he has is completely disabled, to a situation where a practicing physician can be worse off and functioning pretty well.

How does one rate disability for those two?

Q - Assuming that, would that be the fault of the patient or the fault of those who are supposed to rate him?

A - I don't know. I think it depends on individual capacity and motivation and how well these people are to function, and my impression

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Dr. Neumann - Cross.

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is that these people are out to get a
gravy train and the professional person
knows he doesn't have a gravy train.

Q - And you are not helping him any?

A - If he has something the matter with him that is
attributable to this, by golly he is going
to get it. I told Mr. Weger and Mr. Bowles
and the rest of them at Monsanto if these
people have anything coming to them they
are going to get it.

Q - Have you recommended anything for any of the
ones you have examined?

A - I haven't found anything yet to recommend, Mr.
Jeter, and I have looked.

Q - Do you think these men are trying to ride a
gravy train, all you have examined?

A - I don't know of one exception. I am sure there
is not one exception.

MR. JETER:

9418317

Dr. Westmann - Cross..

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When you find that one, let me know it.
That's all I have.

RE-DIRECT EXAMINATION:

By Mr. Bowles.

Q - Dr. Westmann, I would like to ask just a few questions. Recalling the former testimony in this case and Dr. O'Dell's, did you find any evidence of hyperinsulinism in this man?

A - On the basis of my examination, the answer was no. I mean that's what you want me to testify to?

Q - Yes, on the basis of your examination and any other evidence that you had available to you?

A - I have a glucose tolerance curve, I suppose at that time, which showed a blood sugar at 3-1/2 hours at 88, which is a little bit below normal, but that is the only thing

9418318

Dr. Westmann - Re-Direct.

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that is suggesting hypoglycemia and does not suggest to me hyperinsulinism.

Q - Is that a low enough blood sugar level to cause damage to nerves?

A - It is not.

Q - Assuming that it got lower to the point where it could cause damage to the nerves, would that be an irreversible damage?

A - It would not.

Q - In other words, it would not be a permanent thing then?

A - No, sir.

Q - Did you find any evidence in your examination of this man that he had any damage to nerve or nerve tissue?

A - None that I could find.

Q - Dr. Westmann, from your general medical knowledge can you give us an idea of how many people who have true hyperinsulinism have nerve damage, permanent nerve damage, or even the

9418319

Dr. Nestmann - Re-Direct.

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incidence of nerve damage related to hyperinsulinism?

A - Are you talking about hyperinsulinism of, we say, endogenous, organic hyperinsulinism, or the hyperinsulinism from giving too much insulin from a--

Q - (Interrupting): Organic?

A - The type from the pancreas?

Q - That's right?

A - I have never heard of such damage. It is a possibility, but it is certainly most, most uncommon. I can't say that I know positively of a case.

Q - Again, I may be repeating here, were there any findings in this man's case, Mr. Cunningham's case, to indicate to you any nerve damage?

A - No organic nerve damage.

Q - Would the findings which you made indicate any nervous disorder, objective findings?

Dr. Nestmann - Re-Direct.

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In other words, were these symptoms which he related to you?

A - These were symptoms he related. They were subjective findings and they were not supported by any of the tests on physical examination that I do.

Q - Could you relate any of those subjective symptoms to this man's exposure to 245-T ~~or any~~ or any other chemical exposure at Monsanto Chemical Company?

A - No.

Q - Do you feel qualified as an internist to express an opinion as to a man's disability or lack of disability resulting from subjective complaints or objective findings or relating to nervousness and emotional disturbances?

A - I think that's one of your most difficult. I think that would be an exceptionally difficult job, and I think you would have to have

9418321

Dr. Westmann - Re-Direct.

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some very specific guide lines. This previously referred to social security gives you such guide lines, and along with these emotional disorders there have to be other organic signs and symptoms present, and as a direct relationship that would be so severe as to cause a disability, but I see no--this is the reason why without the guide lines you can have all sorts of partial and temporary disability which you see on EPA forms and these social security forms, a guide such as backache and he is disabled; on what basis, he has got a backache, and the doctor is sympathetic, he had a backache yesterday, and so this backache disables him, and on what basis. We have no evidence at all, absolutely none.

Q - Is this true, that in Mr. Cunningham's case, whether there be any disability or any degree

9418322

Dr. Westmann - Re-Direct.

-37-

of disability related to his subjective complaints, whether there be or not be disability, is it your opinion that that condition, whatever it may be, is not related to his occupational exposure?

A - You want to know whether his disability or partial disability is related to his industrial exposure?

Q - Yes, if, assuming for the moment that he has some disability of that nature?

A - I know of no way of positively hooking up the two.

Q - In your best judgment do you feel that it is related, or that it is not related?

A - I cannot relate it.

MR. BOWLES:

I have no further questions.

RE-CROSS EXAMINATION:

9418323

Dr. Westmann - Re-Cross.

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By Mr. Jeter.

Q - Doctor, isn't it reasonable to infer that the exposure of which you had a history brought about this nervous condition? Is it reasonable to infer that?

A - It is reasonable to infer anything you want to infer. These men have been inferred such.

Q - And particularly it is not unreasonable to infer when you have no evidence or factors to produce it?

A - No, it isn't, because if you had put 141 of these 151 coal miners in that situation and with the explosion they would have had the same degree of disability, or more. I mean I don't believe it is unreasonable to infer that at all.

Q - Is it reasonable not to infer it?

A - As attorney for these people, I suppose the answer is it is not reasonable to infer it. As a

physician, as far as asking for cause and effect relationship, I can find no such cause and effect relationship, and I have examined these people for both Monsanto and for workmen's compensation. Some of them I have examined for workmen's compensation and some for Monsanto, and the examination is quite similar, and I think my decision is quite similar except in the case of Mr. Cunningham I make the following statement, chlorfolliculitis, and my concluding paragraph is the other symptoms which he has I do not feel are in any way related to chemical fumes.

MR. BOWLES:

Q - What was the date of that report, Dr. Nestmann?

A - 1951; 6/15/51.

EXAMINATION RESUMED BY MR. JETER:

Dr. Westmann - Re-Cross.

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Q - However, you say out of all of these men you have examined since the exposure that there is only one of them that you have been able to satisfy yourself that his disability has a connection with the exposure?

A - You misinterpret what I said. I think that of all the people I have examined only one has not had some element of emotional disturbance.

Q - Out of all you have examined in connection with the claims that are pending before the Commissioner for hearing, that is the ones you have recently examined, were you able to find anything with any of them that you connected as being produced by the exposure?

A - Except with the exception of a chlorfolliculitis, no, and I don't think there is any question

9418326

Dr. Neetmann - Re-Cross.

-41-

about whether that is the cause and effect relationship. I think everybody is willing to grant that. Now as to the degree of disability, I don't particularly want to make a determination on that.

Q - Does it strike you as unusual that so many men would be confronted with the same event and so many of them have similar ailments or the same ailments and there be no connection between the exposure event and these ailments? Does it make sense to discard all these disabilities which follow this exposure and say it is due to something else?

A - You are talking about the same type of individual?

Q - I recognize that no individual is like the other, but just from a general deduction from cause and effect to where you have one event, namely exposure that these men all have?

9418327

Dr. Westmann - Re-cross.

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A - Did you say explosion, or exposure?

Q - Call it exposure, and following that the men who were there connected with it developed similar ailments, would you say as analyst or student of cause and effect that this exposure had some causal connection with the disability?

A - A year ago I would be much more agreeable to your thesis. After having studied these 151 coal miners I am much slower to agree with you, and don't think I will.

Q - Then you see no causal connection between the disability and the event?

A - No.

MR. JETER:

That's all.

MR. BOWLES:

I have no further questions.

FURTHER DEPOSITION SAITH NOT

9418328

Statements.

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MR. JETER:

We will submit this case as far as the claimant is concerned.

MR. BOWLES:

I would like to move for a general continuance. We have in mind if we reach the point of eventually bringing in probably Dr. Jerome Kahn of the University of Michigan Medical School to review these cases and testify with respect to them. I would like to keep this case open for that purpose, so we can have another part hearing in this, as well as the other cases.

MR. CANTERBURY:

Continued generally.

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Reporter's Certificate.

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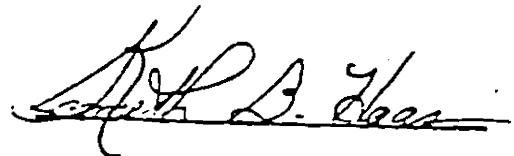
STATE OF WEST VIRGINIA)

SS.

COUNTY OF KANAWHA

I, Kenneth B. Haas, Reporter, having been duly sworn, hereby certify that I did take the foregoing evidence by the use of stenographic notes and characters, and that the same have been duly transcribed by me into the English Language.

I further certify that this is all of the evidence taken by me at the hearing held in the claim of Cecil Cunningham, Claim No. 12943-162, at the office of the Commissioner in the City of Charleston, Kanawha County, on the 29th day of June, 1956.



9418330