

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

STEVEN SPENCER,

Appellant,

v.

SAC OSAGE ELECTRIC CO-OP, INC.,

Appellant.

DOCKET NUMBER WD70443

Date: February 9, 2010

Appeal from:
Labor and Industrial Relations Commission

Appellate Judges:
Division One: Alok Ahuja, Presiding Judge, James M. Smart, Jr. and Lisa White
Hardwick, Judges

Attorneys:
Daniel J. Rice, Esq., and Lincoln J. Knauer, Esq., Springfield, MO, for appellant.
Jeffery T. Adams, Esq., Clinton, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

COURT OF APPEALS -- WESTERN DISTRICT

STEVEN SPENCER

Appellant,

v.

SAC OSAGE ELECTRIC CO-OP, INC.,

Respondent.

WD70443

Labor and Industrial Relations Commission

Before Division One Judges: Alok Ahuja, Presiding Judge, James M. Smart, Jr. and Lisa White Hardwick, Judges

Steven Spencer worked for Sac Osage Electric Co-op, Inc. In 1987, while working, Spencer suffered an exposure to transformer oil, after which he became sick with fever, pain and swelling of his left testicle and penis. In 1988, Spencer was diagnosed with sclerosing lipogranuloma of the penis. After Spencer suffered two more exposures to transformer oil in June and August of 1990, Spencer's treating doctors came to believe that the transformer oil caused Spencer's sclerosing lipogranuloma. Spencer filed a worker compensation claim against Sac Osage in October 1990. Sac Osage denied any causation between Spencer's medical condition and his employment and refused to pay any benefits.

In 2007, a hearing was held before an Administrative Law Judge (ALJ). The ALJ found credible, and primarily relied upon, evidence provided by Spencer and an expert for each side: Dr. Belz for Spencer and Dr. Belsito for Sac Osage. Dr. Belz testified that the transformer oil to which Spencer had been exposed was toxic and more easily absorbed due to chemical changes caused by its age and exposure to extreme heat. Dr. Belsito testified that "virgin" transformer oil cannot be absorbed to a deep enough level to cause sclerosing lipogranuloma.

The ALJ denied benefits to Spencer finding that the transformer oil could not have absorbed to a deep enough level to have caused sclerosing lipogranuloma. The ALJ specifically noted that she was not deciding whether the transformer oil to which Spencer was exposed was chemically altered due to its age and exposure to heat. The Commission affirmed and adopted the ALJ's opinion, over the dissent of one of its members.

Spencer appealed, arguing that insufficient evidence supported the award and that the ALJ erred by substituting her own opinion for uncontradicted medical evidence presented by Dr.

Belz. Besides opposing Spencer's arguments, Sac Osage also argued that the statute of limitations constitutes an alternative basis for affirming the award denying benefits to Spencer. It argued that Spencer's amended claims, filed outside the limitations period, changed his claim from one of accident to one of occupational disease and therefore did not relate back to the time of filing his original claim.

REVERSED AND REMANDED.

Division One holds:

The Commission's Final Award rejects the medical causation opinions offered by Mr. Spencer's expert, Dr. Belz. In doing so, however, the Commission failed to address Dr. Belz's testimony that the transformer oil to which Mr. Spencer was exposed had undergone a process of hazardous decomposition, which fundamentally altered the chemical nature of the substance, and its ability to infiltrate into human skin. Dr. Belz's opinion that Mr. Spencer had been exposed to aged, decomposed transformer oil was a fundamental assumption underlying his opinions as to specific exposure pathways by which the transformer oil could have reached the deep dermal layers of Mr. Spencer's penis, and thereby caused his sclerosing lipogranuloma. We fail to see how the Commission could reject Dr. Belz's causation opinions without addressing this fundamental presupposition; moreover, the Commission's belief that it could reject Dr. Belz's causation opinions without addressing this issue suggests a fundamental misunderstanding of the nature of his opinion testimony.

Without Commission findings as to the nature of the transformer oil to which Mr. Spencer was exposed, it is impossible for us to decide Mr. Spencer's claim that the Commission's rejection of his causation evidence was contrary to the overwhelming weight of the evidence. On remand, the Commission must decide not only the historical facts concerning the transformer oil to which Mr. Spencer was exposed, but must also address Dr. Belz's opinions as to the changes in the chemical composition of that oil based on its service life and history.

We reject the statute of limitations arguments that Sac Osage offers as an alternate ground for affirmance. Contrary to Sac Osage's arguments, Spencer's original claim asserted, albeit informally, both accidental injury and occupational disease. In addition, Spencer's subsequent amendments did not state a new and distinct claim, but merely perfected and amplified the statement of his original claim. Those amendments accordingly related back to the timely filing date of his original claim.

Opinion by: Alok Ahuja, Judge

February 9, 2010

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