



“PROBABILITY” OF HAVING CONTRACTED COMMUNICABLE DISEASE AT WORK HELD SUFFICIENT TO ASSERT AN OCCUPATIONAL DISEASE CLAIM EVEN IN THE ABSENCE OF EVIDENCE OF ACTUAL EXPOSURE

STEPHEN SMITH V. CAPITAL REGION MEDICAL CENTER, --- S.W.3D ---, 2013 WL 1197499 (Mo.App. W.D. MARCH 26, 2013)

In a recent opinion, the Missouri Court of Appeals for the Western District held a workers’ compensation claimant had sufficiently proven her husband sustained an occupational disease arising out of and in the course of his employment with Capital Region Medical Center with evidence that his hepatitis C was “probably” caused by his employment. This, despite the fact that claimant presented no evidence that anyone with hepatitis C was ever present in the workplace.

Stephen Smith, a long-time laboratory technologist for Capital Region Medical Center, was diagnosed with hepatitis in 1991 and ultimately died from the disease in 2007. Claimant established that Smith contracted hepatitis C while working for Capital Region, but did not present evidence of any specific exposure to hepatitis C. The evidence showed Smith worked for the hospital for a number of years before the implementation of safety measures, which are commonplace today. For several years, Smith worked without gloves and without a face shield. The needles used were not of the type with automatic caps. He also often used a pipette to suction blood with his mouth from vials. There was no evidence, however, that Smith was ever stuck with a needle, that he ever had lesions on his hands into which bodily fluids could have seeped, that he ever sucked any blood products into his mouth, or that fluids ever splashed into his face. There was also evidence that in 1970 Smith suffered a gunshot wound and underwent surgery. During the surgery, he was given blood transfusions, with six units of blood.

At the hearing before the Division of Worker’s Compensation Administrative Law Judge, Claimant presented testimony from a physician who opined Smith’s work for Capital Region was the “likely cause” of his having contracted hepatitis C. Although Claimant’s expert acknowledged that receiving a blood transfusion in 1970 was a major risk factor for contracting hepatitis C, he found the daily exposure to blood and body products at work was the largest risk factor and “most probable” source of Smith’s hepatitis C, either through a needle stick or otherwise handling blood or body products.

Based on this evidence, the Administrative Law Judge determined Smith did not sustain an occupational disease arising out of and in the course of his employment. The Labor and Industrial Relations Commission affirmed. The Commission found that Claimant failed to meet her burden of proof that Smith sustained an occupational disease arising out of and in the course of his employment with Capital Region, concluding that no evidence had been presented showing exposure to hepatitis C in the workplace. According to the Commission:

Employee did work for employer for many years (from 1969 until 2006) so it would certainly *seem* that one or more patients with [hepatitis C] must have [been], at some point, treated at the hospital. But we cannot speculate as to these pivotal facts, nor can we fill in the gaps in the evidence with our own conjecture. As it stands, we are faced with a claim for occupational disease where there is no evidence that the disease was ever present in the workplace. We conclude that, absent such evidence, the case for exposure fails.

(Emphasis in original).

The Western District disagreed and reversed. Relying on one of its own opinions from 2009, the Court held Claimant’s medical expert’s testimony was sufficient to establish a *probability* that working conditions caused the hepatitis C, which, according to the Court, is all that is required by Missouri’s workers’ compensation law.



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Interestingly, the case upon which the Court principally relied, *Vickers v. Mo. Dep't of Pub. Safety*, 283 S.W.3d 287 (Mo.App. W.D. 2009), had slightly different facts. In that case, the claimant sought compensation for an occupationally-related bacterial infection she allegedly contracted through her work doing laundry for a nursing home. The claimant there presented evidence that, although she could not point to an exact incidence of exposure to the bacteria, there were four to six patients at the nursing home treated for infections with the same type of bacteria during the period of her employment.

While acknowledging the factual differences in *Vickers*, the Western District found them to be insignificant in that, according to the Court, Missouri workers' compensation law does not require medical certainty that an injury was caused by occupational disease, but only a *probability* that working conditions caused the disease. Here, Claimant put forth sufficient evidence of that probability through her medical expert's testimony.

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