

1994

Glenda W. Giles v. Industrial Commission of Utah, Oakridge Country Club, Worker's Compensation Fund of Utah : Brief of Appellant

Utah Court of Appeals

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BRIEF

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940468 CA

IN THE UTAH COURT OF APPEALS NO.

GLEND A W. GILES,

:

Petitioner/Appellant,

:

COURT OF APPEALS

v.

:

INDUSTRIAL COMMISSION OF UTAH,
OAKRIDGE COUNTRY CLUB, and
WORKER'S COMPENSATION FUND
OF UTAH,

:

Case No. 940468-CA

:

Category 7

:

Defendants/Respondents.

:

APPELLANT'S BRIEF

Petition for Review of final order of the
Industrial Commission of Utah

The Honorable Timothy C. Allen
Administrative Law Judge

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FILED

JAN 24 1995

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OF UTAH,	:	Category 7
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BRIEF OF THE APPELLANT

STATEMENT OF JURISDICTION

This Court has jurisdiction to review the final decision of the Industrial Commission in this workers' compensation proceeding pursuant to Utah Code Ann. Section 35-1-86 (1988).

STATEMENT OF ISSUES ON APPEAL

1. Did the Industrial Commission commit error and abuse its discretion by not referring this case back to the medical panel for consideration of the new material medical evidence obtained and submitted by the Appellant after the Findings of Fact, Conclusions of Law, and Order were issued by the Administrative Law Judge? The standard for review is abuse of discretion, King v. Industrial Commission, 850 P.2D 1281 (Ut.App. 1993) and Section 63-46b-16(4)(h)(i), U.C.A. (1987).

2. Did the Industrial Commission misapply the holding of Stokes v. Board of Review, 832 P.2d 56 (Ut. App. 1992) in denying medical treatment and compensation for psychiatric problems that the medical panel concluded that the Appellant suffers from as a result of her industrial incident by its conclusion that she had an abnormal reaction to a normal event? The standard for review is substantial evidence, Smallwood v. Industrial Commission, 8451 P.2d 716 (Ut. App. 1992) and 63-46b-16(4)(g), U.C.A. (1987).

APPLICABLE STATUTES, RULES AND LEGISLATIVE HISTORY

Appellant submits that the following statute may be determinative of the central issue in this proceeding:

Section 35-1-78(1), U.C.A. (1994):

(1) The powers and jurisdiction of the commission over each case shall be continuing. The commission, after notice and hearing, may from time to time modify or change its former findings and orders. Records pertaining to cases that have been closed and inactive for ten years, other than cases of total permanent disability or cases in which a claim has been filed as in Section 35-1-98, may be destroyed at the discretion of the commission.

STATEMENT OF THE CASE

(a) Nature of the Proceedings

This appeal involves a full denial of benefits in a workers' compensation claim and is from a final Order of the Industrial Commission affirming the Administrative Law Judge's Findings of Fact, Conclusions of Law and Order, and denying the Appellant's Motion for Review and Motion for Reconsideration.

(b) Course of Proceedings

1. On June 9, 1992, Mrs. Giles filed an Application for Hearing with the Industrial Commission seeking workers' compensation benefits for an industrial injury sustained in September of 1991 while employed by the Oakridge Country Club. R5. The Respondents Oakridge Country Club and/or the Workers' Compensation Fund of Utah denied that the applicant had sustained a compensable industrial injury and that the incident occurred as she described. R8,9.

2. On January 4, 1993, a hearing was held before the Honorable Timothy C. Allen, Administrative Law Judge. R228-365. Following the hearing, the ALJ issued preliminary Findings of Fact and referred the case to a medical panel. R17-25 The medical panel met with the applicant in February of 1993 and issued a report which was circulated to the parties in April of 1993. R26-42. On July 15, 1993, the ALJ issued his Findings of Fact, Conclusions of Law and Order wherein he fully denied Mrs. Giles' claim for benefits. R104-117.

3. Mrs. Giles thereafter retained new counsel who filed a Motion for Review on Monday, August 16, 1993. R118-121 and R619-622 and R674-681. Among other things, in the motion, Mrs. Giles stated that she had seen a new doctor on July 14, 1993 and would soon be undergoing new tests at the University of California, Irvine. These tests would include a PET scan, which was not available in Utah at that time. In the Motion, it was requested that the Industrial Commission take no further action on the case until the test results were released and could be submitted. R118-121.

4. On December 14, 1993 Mrs. Giles filed a Supplement to the Applicant's Memorandum in Support of Motion for Review. This supplement contained the reports and test results generated as a result of Mrs. Giles' testing at the University of

California, Irvine. It was submitted as new and previously unavailable evidence showing that the Applicant sustained brain damage as a result of the chlorine gas episode at the Oak Ridge Country Club in September of 1991. R127-150.

5. The Industrial Commission issued its Order Denying Motion for Review on June 6, 1994. R165-167. On Monday June 27, 1994, the Applicant submitted a Request for Reconsideration. Included in this pleading were new reports from a neurotoxicologist/ immunotoxicologist from California who wrote a report on June 21, 1994 relative to further examination and testing of Mrs. Giles in 1994. R154-164. It was submitted as further support for the new evidence submitted in the December 14, 1993 Supplement mentioned above.

6 An Order denying the Request for Reconsideration was issued by the Industrial Commission on July 14, 1994. R171-172.

7. The Petition for Writ of Review was filed with this Court on August 12, 1994. On September 9, 1994, this Court issued a Sue Sponte Motion for Summary Disposition. The parties responded to the motion within the time allowed and the Motion was denied by this Court on October 26, 1994.

(c) Statement of Relevant Facts.

1. Glenda Giles was an employee of the Oakridge Country Club as of September 7, 1991. She was hired on June 3, 1991 to work as office manager for the organization. R235.

2. On the morning of September 7, 1991, there was a brief power outage at the country club. Later that morning, Mrs. Giles directed a co-employee, Paul Spencer, to deliver some materials to the basement of the building. R279. Mr. Spencer shortly returned and reported that there was a chlorine gas leak in the basement where the

swimming pool machinery and supplies were kept. R280. Mr. Spencer and another employee then went to attempt to turn off the chlorine. R281. After they left, as she believed, for the basement, Mrs. Giles spoke with the pool manager who advised her to get some fans to air out the basement. She then spoke with a construction worker, who was there as part of a remodeling crew, about getting some fans. He advised her to call the fire department and have an oxygen breathing mask brought as "you don't mess with chlorine gas." R281,282.

3. Mrs. Giles became concerned when the two co-employees didn't return and so she determined to go down to the basement to look for them. She told a secretary to call the paramedics if she wasn't back in five minutes. She then went into the basement and called several times for the two men in the dimly lit basement. She testified that by then she was having trouble breathing; her nose was running, her eyes were running, she had a headache and she felt dizzy. She then took a deep breath and screamed the names of the two men. She heard one answer and then learned that they were not in the basement, but were outside in the parking lot. She later learned that the turnoff valve for the chlorine bottle was outside of the building. R282,283.

4. Later, men from the fire department arrived and some employees were evacuated from the building. Mrs. Giles testified that she was feeling nauseated at that time and two firemen had her lie down. She was later taken to Humana Health Davis North for medical treatment. She received medical care from various providers after that. She had a variety of physical and mental complaints including dizziness, headaches, anxiety attacks, difficulty with memory, decreased concentration, stuttering and stammering, blurred vision, and sensitivity to some fumes. R283,285.

5. Following the evidentiary hearing held before the Industrial

Commission, the Administrative Law Judge issued preliminary Findings of Fact (R17-25) wherein he concluded that Mrs. Giles wasn't exposed to chlorine gas per se, but rather that she was exposed to the smell of what he termed "superchlorinated water." This was based on his finding that the hose to the chlorine tank didn't rupture, but rather the rupture concerned a line containing water that has been mixed with chlorine gas that would be pumped into the swimming pool. These preliminary Findings of Fact were sent to the medical panel appointed by the Judge, along with the medical records. The panel was commissioned to determine if Mrs. Giles' health problems were medically related to the September 7, 1991 industrial accident. R17-25.

6. The February, 1993 report of the medical panel concluded that none of the Appellant's complaints were directly related to the industrial accident. R26-46. They found no evidence in the medical records, and from blood gas studies, that she has damage from the exposure to the fumes from the superchlorinated water. The panel did feel that because of the Appellant's fear that she had been exposed to chlorine gas, and because of the behavior of emergency personnel at the scene, and because she was given the impression that something was wrong with her blood gases, she had a psychiatric injury. The panel concluded that the events of the episode created a "mental stress arising out of her employment and was beyond that ordinarily encountered by people in life and employment in general." R40. Her past history, which was positive for some psychiatric problems and somatic complaints, made her vulnerable to the events of the episode on September 7, 1991. R41. As a result, the panel suggested that Mrs. Giles be given psychiatric counseling for up to six months. R41.

7. Mrs. Giles was seen by Dr. Richard A. Nelson, M.D. of Billings, Montana on July 14, 1993 for further study of her complaints. R619-622. He felt she

might have a low level organic mental syndrome due to possible chlorine gas exposure. He recommended additional tests that she had not had before. These included a so-called P-300 and Neurometrics EEG. In that report he stated that if the results of those tests proved to be abnormal, he might refer her for a PET (positron emission tomography, R-130) scan "to see if a follow up would show alterations in the sites that one would expect to see with any anoxic episodes associated with acute pulmonary embarrassment during the time of her exposure to the chlorine gas." R-679. As a result of the tests, which Dr. Nelson felt showed abnormal findings (R610-609), Mrs. Giles was referred to the University of California, Irvine for the PET scan. R601.

8. The PET scan was performed on August 24, 1993 in California. R149,150. On December 2, 1993 Dr. Nelson issued a report outlining his conclusions as a result of the findings from the PET scan. The results showed 13 areas of abnormal metabolism in Mrs. Giles' brain. Most are in "the anterior portion of the head and medial temporal regions which are the limbic structures and have to do with executive function and psychiatric and psychologic functioning in the individual along with memory, concentration and attention." R-129 to 148. Dr. Nelson concluded that she has actual organic changes in her brain, shown both electrophysiologically as well as metabolically. He found that her medical history is negative for other potential causes of this damage¹, and concluded that this damage was because of the work exposure of September 7, 1991. R-131.

9. At the time the Appellant filed her Motion for Reconsideration on June 27, 1994, she included with the motion a June 21, 1994 report by Dr. Gunnar Heuser,

¹Other possible causal factors of such damage listed by Dr. Nelson are cerebral concussion, meningitis, encephalitis, diabetes with hypoglycemia, seizure disorders, smoking, alcoholism and drug use. He found none of these in her history. The record on appeal does not disclose, as far as counsel can see, any evidence of any of these factors in the Applicant's medical history.

M.D., a neurotoxicologist/immunologist in California. In his report, he concludes, based upon the prior testing ordered by Dr. Nelson, and on a 5/2/94 SPECT scan, that Mrs. Giles has objective brain abnormalities, all of which could only be due to toxic exposure from the chlorine exposure episode. He felt that they could not be due to disease, metabolic origin or other causes. R157-162.

SUMMARY OF THE ARGUMENT

1. This case should have been sent back by the Industrial Commission to the medical panel in light of the new evidence submitted by the Applicant. The reports resulting from the testing were not available until after the order denying benefits was issued by the Industrial Commission. The Industrial Commission clearly had and has jurisdiction to send the case back for further consideration of the medical issues and it was manifest error and abuse of discretion for the Commission to fail to do so.

2. The Industrial Commission misapplied the law in Stokes in denying psychiatric counseling and benefits to Mrs. Giles by concluding that she had an abnormal reaction to normal events when the evidence in the record supports the conclusion that the events of the day in question constituted an abnormal event. The denial of benefits on this issue should be reversed.

ARGUMENT

POINT I

**THE INDUSTRIAL COMMISSION SHOULD HAVE REFERRED THE CASE
BACK TO THE MEDICAL PANEL IN LIGHT OF THE NEW EVIDENCE
SUBMITTED IN CONNECTION WITH THE MOTION FOR REVIEW. TO
FAIL TO DO SO WAS AN ABUSE OF DISCRETION AND ERROR.**

The Industrial Commission was presented new and material evidence. It

has and had authority to send the case back to the medical panel and should have made the referral.

Section 35-1-78, U.C.A. provides in pertinent part:

(1) The powers and jurisdiction of the commission over each case shall be continuing. The commission, after notice and hearing, may from time to time modify or change its former findings and orders.

The Supreme Court of Utah in Spencer v. Industrial Commission, 733 P.2d 158 (Utah 1987) examined this section in connection with the question of whether new evidence may be submitted and considered by the Industrial Commission after an order has been issued.

The Spencer case involved an injured truck driver who sought permanent total disability benefits. After an evidentiary hearing, and after consideration by a medical panel, the administrative law judge concluded "that the weight of the evidence vitiates a finding of tentative permanent and total disability..." However, some permanent partial disability benefits and medical benefits were awarded.

A few months later, Mr. Spencer applied for a new hearing for payment of certain medical expenses. He later had a vocational rehabilitation workup which found him to be unemployable. His attorney submitted the rehabilitation report to the Industrial Commission with the request that the issue of permanent total disability be heard at an upcoming hearing. Instead, the administrative law judge dismissed the application on the grounds of res judicata.

He indicated that if the applicant therein had wanted to have that report considered, he should have requested a continuance, and because there had been no change in the applicant's condition, the provisions of Section 35-1-78 were inapplicable. Mr. Spencer thereafter filed a motion for review, which was denied, and appeal was then taken to the Supreme Court.

In reversing the Industrial Commission, the Court ruled that the power given the Industrial Commission by Section 35-1-78 to modify awards is not an arbitrary power, "but a power wedded to the duty to examine credible evidence. Under well- established principles of stare decisis, the basis of modification is provided by evidence of some significant change or new development in the claimant's injury or proof of the previous award's inadequacy." Spencer, supra.

The Court further held that the report submitted by the applicant after the initial order denying permanent total disability benefits was not to be rejected under the doctrine of res judicata. It stated:

"Inherent in the Workmen's Compensation Act is the recognition that industrial injuries cannot always be diagnosed with absolute certainty, nor their consequences predicted with complete certainty, and therefore the rule of res judicata is not ordinarily applicable in proceedings of this kind."

Spencer, supra.

The record in this case shows that the ALJ entered an order concluding that Mrs. Giles did not sustain a compensable industrial injury. It was based on the finding that there was no direct chlorine leak into the atmosphere, and the medical panel's conclusion that the actual exposure to the superchlorinated water did not cause or exacerbate any of the Applicant's health problems. The medical panel found nothing

objective in the medical records to substantiate any findings of damage involving seizure disorders, respiratory damage, nor organic brain damage from the event. R-40.

The new evidence submitted along with the Motion for Review and Motion for Reconsideration is significant when viewed in this light. This evidence is the result of different objective tests: the neurometric EEG, the P-300 (which is a type of brain scan), the PET scan, and the SPECT scan. These tests provide the first clinical objective data of damage from the chlorine episode. They were not available to the medical panel because the testing had not been done before that time. They provide hard evidence that regardless of how Mrs. Giles' exposure is characterized - be it inhalation of chlorine gas, or fumes from superchlorinated water - she suffered brain damage as a result.

This type of evidence is akin to DNA testing that makes it possible, sometimes many years after the original event, to determine paternity when other evidence originally available was inconclusive or negative. Although we are not saying that there may not be rebuttal evidence that the employer/carrier may be able to submit with respect to these tests and their results, we respectfully assert that this evidence is positive objective proof that in the eyes of a medical panel could have a major impact on their assessment of the cause of some of Mrs. Giles' health complaints. The Industrial Commission is not free to slough it off by saying that it should have been submitted at the time of the evidentiary hearing. See R-166. She was not sent for the tests until long after the hearing conducted by the ALJ and after the report of the medical panel.

The Industrial Commission has a duty to examine credible evidence. Because neither the Commissioners, nor the ALJ are medical doctors, the medical panel is to be utilized when a significant medical issue is involved. Rule 568-1-9, Utah Administrative

Code. Although the Industrial Commission has the ultimate responsibility to decide cases, it may be an abuse of discretion for the Industrial Commission to fail to refer cases to a medical panel in such cases where the evidence of causal connection between a work related event and the injury may be uncertain or highly technical. See Champion Home Builders v. Industrial Commission, 703 P.2d 306, 308 (Utah 1985).

The interpretation of the results of tests ordered by Dr. Richard A. Nelson, M.D. involve highly technical matters. For example, the readouts of the neurometric EEG scan and P-300 scan are found on pages 602-608, and again on pages 674-678 of the record. They are out of order and should be connected with the interpretative reports found at pages 619 through 622 of the record. Dr. Nelson stated in his 7/14/93 report that these tests showed "some degree of low-grade organic mental syndrome" (organic brain damage). R-620. Based on this he recommended the PET scan in California. The results of this scan are found in the record at 149-150. Dr. Nelson interprets the report in the record at 129-131 concluding there to be organic changes in the brain resulting in impairment. The explanations are technical, but he attributes the abnormal test results to the episode at the Oakridge Country Club. R-131.

The Industrial Commission's only comment about the tests and reports in question is "The report does not alter the Commissions conclusions." R166. No further explanation or clarification is given. The Order Denying the Motion for Reconsideration (which motion included additional reports from Dr. Gunnar Heuser, M.D., neruotoxicologist/immun-ologist) does not even address any of the new evidence at all. R171,172.

There is no evidence like this, either pro or con, anywhere else in the medical record. It is objective. It is material. It presents a significant contrast to the

information available for the medical panel to examine when it considered the matter in February of 1993. At the very least it should have been reviewed by competent medical doctors appointed by the Commission. It was a clear abuse of discretion and error for the Industrial Commission to refuse to refer the matter back to the medical panel for consideration of this new information.

POINT II

THE INDUSTRIAL COMMISSION MISAPPLIED THE HOLDING IN STOKES v. BOARD OF REVIEW WHEN IT DENIED THE APPLICANT PSYCHIATRIC TREATMENT AND COMPENSATION DUE TO AN ABNORMAL REACTION TO ABNORMAL EVENTS

The medical panel did not feel, based on the evidence before it, that Mrs. Giles' exposure to the superchlorinated water released in the clubhouse basement had any direct causal relationship with her health complaints. However, it did feel that she had a psychiatric injury because of her fear that she had been exposed to chlorine gas, and because of the behavior of emergency personnel at the scene, and because she was given the impression that something was wrong with her blood gases. The panel concluded that the events of the episode created a "mental stress arising out of her employment and was beyond that ordinarily encountered by people in life and employment in general." Her past history, which was positive for some psychiatric problems and somatic complaints, made her vulnerable to the events of the episode on September 7, 1991. As a result, the panel suggested that Mrs. Giles be given psychiatric counseling for up to six months.

The Administrative Law Judge denied this suggestion, basing his denial on the

holding in Stokes v. Board of Review, 832 P.2d 56 (Ut. App. 1992). He concluded as follows:

In the Stokes case the Court denied the injured worker's claim on the basis that she experienced an abnormal reaction to normal events and that the abnormality was created by non-work related incidents. In the instant case, as indicated previously, the applicant has a significant history of prior psychiatric problems and treatment. But for this non-work related background, the applicant would not have experienced any abnormal reaction to the incident at the Oakridge Country Club.

R-114.

The error of the Commission in applying the holding in the Stokes case to the facts here is that Stoke stands for the standard that an abnormal reaction to normal events is not compensable where the abnormality is created by non-work related events. Here, we have an abnormal reaction to abnormal events.

In Stokes, the claim was made that a post traumatic stress disorder was sustained as a result of alleged sexual harassment and retaliatory actions through disciplinary proceedings at work. However, it was found in Stokes that the sexual harassment never occurred and the disciplinary proceedings were conducted according to normal company procedure.

Mrs. Giles' situation is very different. She had a reaction to *abnormal* events. The spill of the so-called superchlorinated water from the pump area where the water and chlorine gas are mixed is not a normal happening at a country club where the worker in question was a bookkeeper. This was an unusual event.

Mrs. Giles believed that a rupture of a chlorine line had occurred in the basement. She went into the basement to find why two co-workers who had

gone in to fix the problem hadn't returned. She was told by a construction worker at the club that chlorine could be a serious problem as "you don't mess with chlorine gas." She was told to get fans to clear out the basement. Emergency personnel were called to the scene and the building was evacuated for a short time.

The Administrative Law Judge implicitly recognized this when he adopted in its entirety (R114) the report of the medical panel, who wrote:

...the fact that there was an incident in which she was informed by a fellow employee that there was a chlorine leak in the basement and the fact that this was reinforced by other professional people at the scene and subsequently does represent a mental stress arising out of employment and was beyond that ordinarily encountered by people in life and employment in general.

R40.

The medical panel recognized the pre-existing psychiatric history of Mrs. Giles, but it concluded that she would benefit from up to six months of counseling because of this event, after which any remaining psychiatric problems would be due to her pre-existing history. It recognized that the abnormal events of the day at least aggravated any underlying problems that Mrs. Giles may have had.

The Administrative Law Judge concluded on page 12 of his Order that Mrs. Giles had an abnormal reaction to the "normal event of leaking chlorinated water." R115. This minimization of the event is not supported by the record.

For the purposes of this appeal, we will concede that there was no true chlorine gas leak in the basement. That was the conclusion of the ALJ, and it

appears this conclusion is not so lacking in support as to be clearly erroneous, nor was it attacked in the Motion for Review. However, it is fully concluded by the ALJ that there was a release of superchlorinated water, with resulting smell or fumes, due to a rupture in a line leading from a pump in the clubhouse basement.

The transcript from the hearing discloses the following evidence:

a. Michael Whitely of the Oakridge Country Club testified that he came after the leak was discovered, but he believed a small amount of actual gas escaped from the pump hose following a power shutoff (R239) and that two employees went into the basement and smelled it (R239) and reported this back to Mrs. Giles, who got very excited and even passed out during the course of the events. R255.

b. Lynn Groves, maintenance man at the Oakridge Country Club, testified that he examined the pump area in question two days after the incident and found a brass line to have popped off at the pump, which would have released what he termed superchlorinated water, which "smells very strong, sort of like bleach, like chlorine." R311. "It definitely has a very strong odor to it." R317.

c. Marsha Jones of the Oakridge Country Club testified that she was in the kitchen of the clubhouse and buffet table area on the main level on the day of the incident and didn't smell any chlorine fumes from where she was at. R326,327. She testified that firemen went through the building. She verified that there was a lot of confusion in the building due to the episode. R327.

d. Thomas Mooso, an investigator for the Industrial Commission,

Utah Department of Safety and Health, testified that chlorine gas falls rather than rises unless it is very warm, and such would explain why no one smell fumes on the main level of the building. R337.

e. Glenda Giles testified in her own behalf at the hearing. She stated she was told by a co-worker that there was a chlorine leak in the basement of the clubhouse. She was soon told by two co-workers that they were going to turn off the chlorine. R281. She asked a man working on a remodeling of the clubhouse for some large fans, which was recommended to her by the pool manager via a telephone call. The construction worker told her to immediately call the fire department, that "you don't mess with chlorine gas," and that the fire department should be asked to bring oxygen breathing masks. She did this. R281,282.

Mrs. Giles soon realized that the two co-workers had not returned and so she went into the basement to find them. She went outside to the north side of the building and at the top of the basement stairs was able to smell chlorine. She went down the stairs to a door and opened it. The basement below was dark and dimly lit. She called for the two boys and because of no answer descended further into the basement. She testified by then she was having a hard time breathing, her nose and eyes were running and she was having a hard time breathing. She felt dizzy and nauseous. She then took a deep breath and screamed the names of the two boys. When they answered she learned that they were actually outside. She then left the basement. R282,283.

When the fire department arrived, she was asked to evacuate the ladies' area inside the building, which she did. She found some locked doors inside and

learned they had been locked because of the chlorine gas concern. She was told by a policeman that the gas was drifting north and that she should get out of the building. She went to the kitchen where she passed out momentarily after sitting down. She was thereafter taken to the emergency room at a nearby hospital. R283-285.

From the record, it is seen that the event is wrongly characterized by the ALJ when he concluded that the episode involved only the normal event of leaking water. At the time, it was believed there had been a release of chlorine. The fumes from the superchlorinated water were characterized as having a very strong smell. This was a very stressful event for Mrs. Giles who was concerned about the safety of the two co-workers who she thought were in the basement, and who then made what she felt was a personal risk by going into the basement to try to find them. She reacted to the smell. Based upon the reports of Dr. Nelson and the test results, whatever amounts she inhaled when she went into the basement, it was enough to cause the organic problems set forth in the reports. But, aside from this, it resulted, as set forth by the medical panel, in psychiatric injury, which, although not permanent, is in need of treatment.

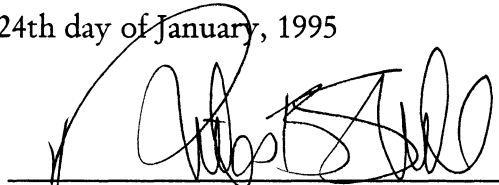
The conclusions of the ALJ and Industrial Commission denying benefits for this are against the clear weight of the evidence and are clearly erroneous. Stokes does not apply to bar benefits for an abnormal reaction to abnormal events. On this point the Industrial Commission should be reversed and benefits as described by the medical panel should be awarded..

CONCLUSION

This case should be remanded back to the Industrial Commission for a referral of the new medical evidence back to the medical panel.

The Industrial Commission's conclusion that the Applicant is not entitled to workers' compensation benefits for temporary aggravation of her psychiatric condition is not supported by substantial evidence and should be overturned and benefits should be awarded.

Respectfully submitted this 24th day of January, 1995

A handwritten signature in black ink, appearing to read "Phillip B. Shell", written over a horizontal line.

Phillip B. Shell
Attorney for Appellant


CERTIFICATE OF MAILING

I hereby certify that I caused to be mailed two true and correct copies of the foregoing BRIEF OF THE APPELLANT, postage prepaid, to each of the following:

Richard Sumsion, Esq.
Workers Compensation Fund of Utah
P.O. Box 57929
Murray, UT 84157

Sharon J. Eblen, Esq.
Industrial Commission of Utah
P.O. Box 146615
Salt Lake City, UT 84114-6615

on this 24th day of January, 1995.



Phillip B. Shell
Attorney for Appellant

ADDENDUM

- A. FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER
- B. ORDER DENYING MOTION FOR REVIEW
- C. ORDER DENYING MOTION FOR RECONSIDERATION

A. FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

THE INDUSTRIAL COMMISSION OF UTAH

Case No. 92-693

GLEND A W. GILES,

Applicant,

vs.

OAKRIDGE COUNTRY CLUB and/or
WORKERS COMPENSATION FUND OF
OF UTAH,

Defendants.

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FINDINGS OF FACT
CONCLUSIONS OF LAW
AND ORDER

HEARING: Hearing Room 332, Industrial Commission of Utah, 160
East Broadway, Salt Lake City, Utah, on January 4,
1993, at 1 o'clock p. m., the same being pursuant
to Order and Notice of the Commission.

BEFORE: Timothy C. Allen, Presiding Administrative Law
Judge.

APPEARANCES: The applicant was present and represented by Pete N
Vlahos, Attorney at Law.

The defendants were represented by Richard G.
Sumsion, Attorney at Law.

At the conclusion of the evidentiary hearing, the matter was
taken under advisement by the Administrative Law Judge and referred
to a Medical Panel for its evaluation. The Medical Panel Report
was received and distributed to the parties. The applicant filed
an objection to the Report indicating her belief that the Panel had
not been given the records of Dr. Gummow and others. However, a
review of the file and the Panel Report indicates that those
records were forwarded to the Panel. Accordingly, the applicant's
objections are without merit and should be dismissed. The Panel
Report is hereby admitted into evidence.

The applicant also submitted records from her social security
proceeding which have also been reviewed by the Administrative Law
Judge. Being fully advised in the premises, I am prepared to enter
the following,

GLEND A GILES
ORDER
PAGE TWO

FINDINGS OF FACT:

The applicant herein, Glenda W. Giles, commenced employment with the Oakridge Country Club as an office manager on June 3, 1991. At the time of the second interview prior to being hired, the manager of the country club noticed that the applicant had a chronic cough and her eyes watered. Shortly after the applicant was hired, she had a dental problem, which required that she take time off from work. Thereafter, the applicant had numerous medical problems as did her son which necessitated her absence from her employer.

Shortly after the applicant began work at the Oakridge Country Club, the country club purchased a new computer system. The applicant was to be trained by the bookkeeper, Lynne N. Barnes, in the operation of the computer. Ms. Barnes testified that because of the applicant's numerous absences from the office, she was unable to accomplish much training of the applicant. The need for training arose because Ms. Barnes was pregnant and would be leaving soon to have her baby. Ms. Barnes testified that she was instructed that she was to train Ms. Giles in the necessary functions to be performed by a general office manager. The office manager position had opened up because the prior incumbent, Audrey Sager, had reached the age of 65 and had decided to retire, however, after Ms. Sager retired, she concluded that she did not want to stay at home full time, and so, she requested a half-time position and was given such as the accounts receivable clerk. Ms. Sager also testified that shortly after the applicant started her employment, she was sick. Ms. Sager testified that the applicant had a persistent cough, sinus problems and a tooth problem. In addition, she also testified that the applicant's son had sustained an industrial injury to his back and that the applicant spent a lot of time taking her son to the doctor and to various other locations.

Ms. Sager also testified that the applicant was ill equipped to handle the job of office manager at the Oakridge Country Club. Ms. Sager testified that shortly after the applicant had been hired by the country club, she was called by Ms. Giles one day and asked to meet her in the bar. When Ms. Sager met with Ms. Giles, Ms. Giles wanted to know what the general ledger was. It seems that Ms. Giles, in her prior employment as an office manager with

GLENDIA GILES
ORDER
PAGE THREE

McDonnell Douglas, would pay bills for the various departments, but had no responsibility or experience with preparing departmental budgets and seeing to it that they were adhered to, which is required at the club with its general ledger system. The applicant's performance did not improve. On August 26, 1991, Ms. Barnes had her baby, and, as such, was unavailable for six weeks following.

On September 7, 1991, the events which prompted the filing of a claim in this matter occurred. On the morning of September 7, 1991, there apparently was a flood in the kitchen, which damaged some of the tiles on the ceiling. After that crisis was taken care of, the next events which took place bring us directly to the matter in controversy in this case. Towards the late morning of September 7, 1991, the applicant, in her capacity as office manager, directed an employee, Paul Spencer, to take some things to the basement of the country club. Mr. Spencer reported back to the applicant that there was a chlorine leak in the basement. The applicant attempted to call Mr. Whitely, the manager of the club, but he was not at home. She then called the pool manager, who informed her that the leak that was being complained of might be a back wash of chlorinated water. The pool manager then asked to speak to Mr. Spencer and, after doing so, Mr. Spencer left. Mr. Spencer then returned with Jake Thompson, a co-employee. The pool manager informed Ms. Giles that if she had some big fans, she should use those to remove the smell from the country club. When the applicant inquired of the general contractor, who was performing remodeling duties, if he had any fans, he informed her that if there was a leak of chlorine gas, she should contact the fire department. Ms. Giles promptly got off the line with the pool manager and called the Farmington Fire Department.

Ms. Giles went to the top of the stairs and at that time smelled chlorine. She then went down the stairs looking for Thompson and Spencer, and called to them but received no answer. The applicant testified that her eyes were burning and her nose was running, and that she yelled as loud as she could and, at that time, the young men answered from the parking lot.

GLEND A GILES
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PAGE FOUR

The fire department arrived and some employees were evacuated. The part-time interior decorator for the club testified that she was not evacuated, although she was working in the office at the time of all of the confusion. She also testified that she noticed no smell of chlorine upstairs whatsoever.

The applicant went on to testify that she was nauseated after she had walked into the dining room and that she told the firemen that she did not feel good. Two firemen then laid her down on the floor and the applicant claims that she was in and out of consciousness, the medical evidence does not support that claim. The applicant was taken to Humana Health Davis North for medical treatment.

The applicant came under the care of Dr. Bart Nilson, who had the applicant receive a blood gas study as well as conducting a physical examination. It was also noted that the applicant has Marfan's syndrome, a connective tissue disorder. The doctor noted that the applicant did not have any respiratory difficulty, nor could he find any skin irritation or irritation to the mucous membranes of the applicant's nose or mouth. With respect to her chest, she was given a chest x-ray which was normal. The applicant's arterial blood gas study was abnormal, but the doctor noted that the applicant was not in any respiratory difficulty and was not wheezing. Those results were then sent to the applicant's family physician, Dr. Warden.

The applicant reported to Dr. Warden for treatment of this condition initially on September 9, 1991. Dr. Warden's office notes for that visit indicate that the applicant's oxygen saturation was normal and her oxygen content in volume was also normal. Dr. Warden prescribed Fioricet for the applicant. The applicant next returned to Dr. Warden on October 21, 1991. At that time, the applicant was complaining that her left trapezius was having a terrific spasm with some tenderness. The applicant also reported: "Wondering if her lapses in memory could be due to chlorine and, or, car accident from whiplash." In December of 1991, the applicant was referred to Dr. Sadler for pulmonary studies. Dr. Warden also at that time noted that the applicant had a persisting bronchial exudate, which was purulent and yellowish green.

GLEND A GILES
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In an office note dated December 31, 1991, Dr. Warden makes the following interesting observation: "Patient continues to have cough with spasms with a chronic bronchitis probably secondary to chlorine exposure." The interesting thing about the quoted passage from Dr. Warden's office notes, is that that office note fails to take into account the applicant's pre-exposure history. Specifically, on July 12, 1991, for example, Dr. Warden made the following entry in his office notes: "Glenda is having a persisting bronchial cough that has been productive of some green and yellow stuff." The doctor concluded at that time that the applicant had chronic bronchitis. Yet six months later, the doctor attributes that same chronic bronchitis to the applicant's chlorine exposure, which is obviously incorrect.

Ms. Giles had had problems with bronchitis while working at Hill Air Force Base. The applicant told Dr. Gummow that: "[a]fter she left this job, she reported no additional significant problems with bronchitis." This statement to Dr. Gummow by the applicant was not true. It will be recalled that on July 12, 1991, Dr. Warden's office notes indicate that: "Glenda is having a persisting bronchial cough that has been productive of some green and yellow stuff." The doctor concluded that: "Patient has a chronic bronchitis." The applicant left her employment at Hill Air Force Base in October of 1990. The applicant commenced employment with the Oakridge Country Club on June 3, 1991. Therefore, the applicant's testimony that she had no further problems with her bronchitis after she left McDonnell Douglas at Hill Air Force Base is just not true.

Therefore, Dr. Gummow's finding that: "Mrs. Giles is also being followed for a cough which developed after the exposure" is also not true.

The applicant was seen by Dr. Sadler on January 14, 1992, and, at that time, Dr. Sadler on page 79 of Exhibit D-1, found: "Etiology of sx (symptoms) not apparent from monitoring HR (heart rate), rhythm, BP (blood pressure), lung exam."

GLENDA GILES
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On January 28, 1992, the applicant was seen by Dr. Heiny for an examination of her sinuses. The applicant had told Dr. Heiny that "[s]he has never had a previous history of headaches or pain in the sinuses prior to this." Unfortunately, the history given to Dr. Heiny by the applicant was not accurate. On cross-examination, the applicant admitted that she had chronic bronchitis, sinusitis and headaches before September 7, 1991. In fact, a review of the medical records of Dr. Hirsbrunner of December 28, -1987, belies that contention by the applicant. In that record, there is a personal history form, which the applicant completed. Under the ear, nose and throat section of that physical complaint sheet, the applicant underlined sinus infection, and wrote along side of it: "Has been in hospital with them."

In that same personal history report, which is contained on page 62 of Exhibit D-1, the applicant lists quite a few complaints that she was having at that time. It is interesting to note that many of the complaints listed there are the same complaints that the applicant has now attributed to her industrial exposure of September 7, 1991. For example, in 1987, the applicant was complaining of fainting, dizziness, chills, sweats, fever, headache, fatigue, nervousness, numbness or pain in the arms, hands or legs. With respect to the numbness or pain in her arms, the applicant has indicated that this had its onset: "after falling".

A further review of the past health history completed by the applicant indicates that in 1970, she fell in the street and injured her neck. Sometime afterwards, she had a myelogram in the 1970's. In 1983, the applicant fell on some ice injuring her right shoulder and leg. In 1980, she reported falling from an orchard ladder approximately eight feet, fracturing her foot and injuring her right shoulder and hip. In 1981, she sustained an automobile accident wherein her neck was injured. In that personal history report of 1987, the applicant went on to indicate that she was having a problem with an earache, nosebleeds, dental decay, enlarged glands, chronic cough to which she appended the note: "At the present hard cough had it last winter, DC in Salt Lake City did diathermy for it." The applicant also complained of a rapid beating heart under the cardiovascular system and under the heart disease section of the form, indicated: "rapid heart rate not consistent rate". The applicant also went on to complain of constipation, diarrhea, pain over the stomach to which she appended a note: "ulcers", and numerous other complaints.

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PAGE SEVEN

On September 22, 1990, the applicant was involved in an automobile accident. While she was stopped at a traffic light at 24th and Monroe Street in Ogden, applicant's car was rear ended. At that time, the applicant complained of:

. . . dizzy, light headed, weak kneed, as if I were going to pass out; pain at base of skull, base of spine, between shoulder blades, right arm and shoulder, right side from shoulder to hip, right knee; couldn't think clearly. (Emphasis supplied).

The applicant's present complaints, are detailed to Dr. Warden on page 8 of Exhibit D-2; in that report, the doctor identifies 25 symptoms that the applicant attributes to her chlorine exposure. At the time of the hearing, the applicant had some additional symptoms that she felt were related to her alleged exposure. Those symptoms included #26- Dropping things, #27- Heart races at night, #28- Hand numbness, #29- Diarrhea and pain in the stomach. The reader may have noticed that the complaints about her heart racing, hand numbness and diarrhea, are complaints the applicant had already voiced long prior to the industrial events of September 7, 1991. In that same report, Dr. Warden makes a strange statement. That statement being: "She was seen at the Kaysville Medical Center shortly after the exposure and was found to have some difficulty with respiration. . . ." That foregoing passage is strange, because the applicant was not seen at the Kaysville Medical Center until September 9, 1991.

On September 7, 1991, when the applicant was examined at Humana Health Davis North by Dr. Nilson, Dr. Nilson specifically found: "She does not have any respiratory difficulty." The doctor also observed that the applicant did not have any wheezing. Therefore, Dr. Warden's entry that two days after her examination at the hospital, the applicant was having respiratory difficulty, is a very strange entry indeed. Further, in reviewing the office note for that first visit to the Kaysville Medical Center on September 9, 1991, I see no mention in the doctor's office notes of any respiratory difficulty being suffered by the applicant. Rather, the doctor only noted that the applicant was still complaining of a headache, but he specifically noted: "No longer feels extremely ill." Therefore, the doctor's finding that the applicant was having respiratory difficulty when he saw her on September 9, 1991, is not supported either by the medical records of Humana Health Davis North facility or is that finding supported by the doctor's own office notes of that visit.

GLENDIA GILES
ORDER
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On further cross-examination, the applicant admitted that in 1979, she was admitted to the hospital complaining of chronic fatigue and joint pain.

On November 25, 1992, the applicant received an additional blood gas study which indicated that her pulmonary function was within normal limits.

The applicant has also had some pre-existing psychiatric problems. The applicant has a multiple personality disorder and an organic mental disorder as diagnosed by Dr. Gummow. Dr. Gummow describes the applicant's psychiatric history as: "Traumatic child and adult psychiatric history."

The applicant has complained of mental confusion and lack of mental quickness as the result of her alleged gas exposure at Oakridge Country Club. The Administrative Law Judge had the opportunity to observe the applicant at the evidentiary hearing for approximately four hours. During that time, the Administrative Law Judge noted that the applicant, while teary on occasion, did not exhibit any signs of mental confusion or lack of mental quickness. Rather, Ms. Giles was well engaged in the prosecution of her compensation claim, such that she readily supplied dates to her counsel, and also readily corrected misstatements of facts by opposing counsel or by others in the courtroom. In addition, the applicant was able to prepare a fairly detailed schematic of the physical layout of the Oakridge Country Club while one of her co-employees was being cross-examined by her counsel. Therefore, the Administrative Law Judge finds that the applicant's claim of mental confusion resulting from the alleged gas exposure is not credible nor believable.

The reader may have noticed that the Administrative Law Judge has referred to the events of September 7, 1991, on occasion as an alleged exposure of chlorine gas. The reason for that qualification will become much more readily apparent following the upcoming discussion. As may be remembered, the applicant testified that she was exposed to chlorine gas. However, the testimony of the witnesses shows that, in fact, the applicant was not exposed to any chlorine gas per se.

GLENDA GILES
ORDER
PAGE NINE

After the fire department had arrived on September 7, 1991, the department assigned its Hazardous Materials Investigator to look into the situation in the pool room. The investigator testified that he did not smell any chlorine when he arrived at the country club. He also testified that he did not observe the applicant, but did note that she had been transported to the hospital. Mr. Parker testified that he first noticed a chlorine smell when he got to the swimming pool pump room. He testified that he put on his self-contained breathing apparatus to check out the area. He also testified that chlorine gas presents a significant health risk. He went on to testify that chlorine rises in warm weather and normally would cling to the ground otherwise. Mr. Parker opined that the brass line carrying gas from the CO₂ tank to the pump unit caused chlorine gas to be released. However, in carefully reviewing the written report prepared by Mr. Parker, the following passage is noted: "There was a leak at this pump that permitted pressurized chlorine gas in water to enter the atmosphere." This last passage is critical, because listening to Mr. Parker's testimony, one was left with the impression that the chlorine gas by itself was escaping into the atmosphere of the pump room. However, this is not what occurred.

Mr. Groves, the maintenance manager, testified that he reported to work on Monday morning following the chlorine incident, Saturday, September 7, 1991. Mr. Groves testified that when he reported to work on Monday morning, September 9, 1991, he was informed of the problem with the swimming pool, and so he went to the pump room to investigate the situation. Mr. Groves testified that there was a leak of superchlorinated water from the brass line, but no gas had escaped. He further testified that the chlorine gas line did not come off as seems to have been intimated by Mr. Parker.

Tom Mooso, Utah Occupational Safety and Health (UOSH) investigator, was also called and testified. Mr. Mooso took issue with Mr. Parker's testimony that chlorine would have risen on September 7, 1991. Mr. Mooso testified that chlorine falls not rises, except under extremely warm temperatures. The Administrative Law Judge being puzzled by this apparent discrepancy between two individuals who should know these matters, investigated this particular aspect of the claim further. The Administrative Law Judge is informed and takes judicial notice of the fact that chlorine has a specific gravity of 3.24, while oxygen or air has a specific gravity of 1. What this means in laymen's terms is that

GLENDIA GILES
ORDER
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chlorine is 3.24 times heavier than air. Accordingly, Mr. Parker's testimony that the chlorine gas, had any leaked, would have been expected to rise is factually untrue. As Mr. Mooso testified chlorine would only rise under extremely warm temperatures. The witnesses for the applicant and the applicant, herself, testified that September 7, 1991, was a rainy cool day. Therefore, it was factually impossible for the chlorine to have risen as alleged by Mr. Parker.

Further, Mr. Mooso testified concerning the inspection he conducted at the Oakridge Country Club. Mr. Mooso testified that upon arriving at the Country Club, he was met by Mr. Whitely, who informed him what had occurred. According to Mr. Whitely, the chlorine line from the gas bottle had burped into the atmosphere. However, Inspector Mooso testified that when he inspected the line, the "b"-valve was still intact, and, as such, that indicated to him that there had been no leak of gas as thought by both Mr. Parker and Mr. Whitely. Rather, Mr. Mooso explained that had the line come off the chlorine bottle, there would have been a continuous emission of chlorine gas into the pool room. As testified to by Mr. Groves, when he arrived on Monday, September 9, 1991, for work that morning, he observed that the line from the chlorine bottle to the insertion pump was intact. Rather, the line that had come loose was the line from the pump which contained superchlorinated water. Mr. Mooso testified that a citation was not written up for a chlorine gas release because no chlorine gas release occurred.

Having weighed all the testimony and evidence on this particular subject, I find and conclude that there was no release of chlorine gas on September 7, 1991. Rather, there was a spill of superchlorinated water onto the ground. As testified to by both Mr. Groves and Mr. Mooso, superchlorinated water is not the equivalent of chlorine gas. Rather, superchlorinated water is analogous to spilling liquid bleach on one's floor, which is basically what occurred in this particular situation. Therefore, I find that the applicant was not exposed to chlorine gas, but rather smelled superchlorinated water which had spilled on the floor.

With the file in this posture, case was referred to the Medical Panel to determine if the applicant's constellation of 29 complaints were medically related to the industrial incident of September 7, 1991. The Panel concluded and found that the applicant's constellation of complaints were not directly related to the industrial event of September 7, 1991. Rather, the Panel found: "The applicant did not receive a toxic dose of chlorine gas per se, but thought she had inhaled something noxious because of the smell she perceived." The Administrative Law Judge has reviewed the medical and other evidence on this file, and I find that the foregoing formulation by the Panel is reasonable and I hereby adopt those findings as my own.

The Panel went on to observe that the applicant's ". . . rich history of past psychiatric problems and somatic complaints and a work relationship of great concern to her at the time. . ." made the applicant ". . . highly vulnerable to any anxiety provoking event such as what she interpreted as having happened on 7 September 1991." (emphasis added) The Panel also found ". . . that any longer term residual psychiatric symptoms are a reflection of past psychiatric trauma and associated problems, rather than having symptoms indefinitely from her misperception of that single event."

The relevant case law governing this matter is found in the decision of Stokes v. Board of Review, 832 P.2d 56 (Utah App. 1992). In the Stokes case the Court denied the injured worker's claim on the basis that she experienced an abnormal reaction to normal events and that the abnormality was created by non-work related incidents. In the instant case, as indicated previously, the applicant has a significant history of prior psychiatric problems and treatment. But for this non-work related background, the applicant would not have experienced any abnormal reaction to the incident at the Oakridge Country Club.

As already found, the applicant was not in fact exposed to chlorine gas, and she did not sustain any physical injury from the smell associated with the malfunctioning chlorinator. In fact, the two individuals who actually entered the pump room to inspect the chlorinator, were in much closer proximity to the leaking chlorinated water, but suffered no ill effects from their experience. Further, the hazardous materials investigator testified that he could not smell chlorine upstairs where the

GLEND A GILES
ORDER
PAGE TWELVE

applicant claims she could smell chlorine. Rather, Mr. Parker stated that the chlorine smell was first noticed upon entering the pump room itself, which the applicant did not enter. Therefore, his testimony casts serious doubt on the applicant's testimony that she could smell chlorine upstairs or partially down the staircase. Further doubt is also cast by the testimony of the interior decorator who was upstairs at the time of the incident and did not smell any chlorine whatsoever.

Based on the foregoing, I find that the applicant may believe that she was exposed to chlorine gas, but that belief does not prove that an exposure actually occurred. Rather, the preponderance of the evidence indicates that the applicant was not exposed to chlorine gas on September 7, 1991. Instead, the applicant may have smelled some of the leaking chlorinated water, which she then misperceived as a toxic leak of chlorine gas. The applicant's severe anxiety attack was an abnormal reaction to the normal event of leaking chlorinated water, and the applicant's extreme reaction or abnormality was a product of the applicant's organic mental disorder and prior psychiatric trauma and associated problems which were unrelated to her employment. Therefore, the applicant has failed to establish legal causation and as such her claim must be dismissed. The applicant has also failed to establish medical causation. The medical evidence stands for the proposition that the applicant's 29 complaints are of a longstanding nature, and were clearly complained of and treated prior to the events of September 7, 1991.

CONCLUSION OF LAW:

The applicant has failed to establish legal and medical causation in this matter, and as such her claim of an industrial accident on September 7, 1991 should be dismissed with prejudice.

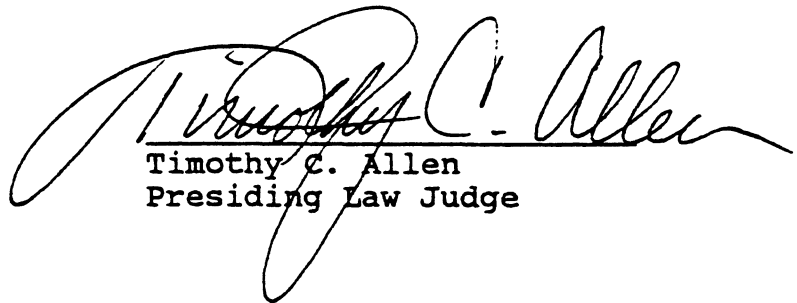
ORDER:

IT IS THEREFORE ORDERED that the claim of Glenda Giles alleging a compensable accident on September 7, 1991 should be and the same is hereby dismissed with prejudice.

GLENDIA GILES
ORDER
PAGE THIRTEEN

IT IS FURTHER ORDERED that any Motion for Review of the foregoing shall be filed in writing within thirty (30) days of the date hereof, specifying in detail the particular errors and objections, and, unless so filed, this Order shall be final and not subject to review or appeal. In the event a Motion for Review is timely filed, the parties shall have fifteen (15) days from the date of filing with the Commission, in which to file a written response with the Commission in accordance with Section 63-46b-12(2), Utah Code Annotated.

DATED this 15th day of July, 1993.



Timothy C. Allen
Presiding Law Judge

MAILING CERTIFICATE

I hereby certify that on July 15, 1993, a copy of the attached Order in the case of Glenda Giles was mailed to the following persons at the following addresses, postage prepaid:

Glenda Giles
P.O. 411
Kaysville, UT 84037

Richard Sumsion, Esq.
WCFU
P.O. 57929
SLC, Utah 84157

BY DIRECTION:

INDUSTRIAL COMMISSION OF UTAH

By Tim Allen
Tim Allen

B. ORDER DENYING MOTION FOR REVIEW

THE INDUSTRIAL COMMISSION OF UTAH

GLEND A W. GILES,

Applicant,

vs.

OAKRIDGE COUNTRY CLUB and
WORKERS COMPENSATION FUND OF UTAH,

Defendants.

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ORDER DENYING
MOTION FOR REVIEW

Case No. 92-0693

Glenda W. Giles seeks review of an Administrative Law Judge's Order which denied her claim for workers' compensation benefits.

The Industrial Commission of Utah exercises jurisdiction over this Motion For Review pursuant to Utah Code Ann. §63-46b-12, Utah Code Ann. §35-2-102(2), Code Ann. §35-1-82.53, and Utah Admin. Code R568-1-4.M.

FINDINGS OF FACT

The Commission adopts the findings of fact set forth in the ALJ's decision dated July 15, 1993.

In summary, Mrs. Giles was employed as office manager at Oakridge Country Club from June 3, 1991. She has a long history of various ailments which predate her employment at Oakridge. On September 7, 1992, highly chlorinated water leaked into the Oakridge office basement. Mrs. Giles experienced some minimal exposure to the chlorinated water.

After the foregoing incident, Mrs. Giles suffered a severe anxiety attack. She believed that her preexisting ailments had become more severe after the incident. There is no substantial evidence in the record to support Mrs. Giles' belief. However, the record does establish that her reaction to the incident was abnormal and unrelated to her employment at Oakridge.

CONCLUSIONS OF LAW AND DISCUSSION

The Utah Workers' Compensation Act compensates workers for injuries arising out of and in the course of their employment. Utah Code Ann. §35-1-45. However, an abnormal reaction to normal events is not compensable where the abnormality is created by non-work related incidents. Stokes v. Board of Review, 832 P.2d 56, 61 (Utah App. 1992).

ORDER DENYING MOTION FOR REVIEW
GLENDA GILES
PAGE TWO

In this case, Mrs. Giles experienced an extreme emotional reaction to her discovery that super chlorinated water was leaking in the country club basement. While an event such as occurred at Oakridge is not a frequent occurrence, it also was not a particularly serious or alarming incident. As noted by the ALJ, the reasons for Mrs. Giles' reaction were not related to her employment. Furthermore, the medical evidence does not establish that her ailments are related to the incident. Consequently, Mrs. Giles has failed to establish her right to workers' compensation benefits.

The Commission is aware of the report of Dr. Nelson, submitted for the first time after the ALJ had issued his decision. In the interest of efficiency and fairness, the doctor's report should have been submitted at the hearing conducted by the ALJ. However, the report does not alter the Commission's conclusions.

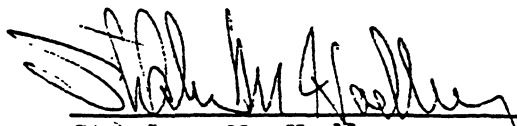
In view of the foregoing, the Commission finds, as did the ALJ, that Mrs. Giles has failed to establish that she is entitled to benefits under Utah's Workers' Compensation Act.


ORDER

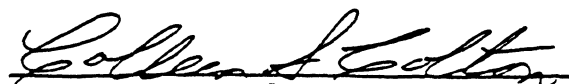
The Commission affirms the Administrative Law Judge's Order, dated July 15, 1993, and denies Mrs. Giles' Motion For Review. It is so ordered.

DATED this 6th day of June, 1994.




Stephen M. Hadley
Chairman


Thomas R. Carlson
Commissioner


Colleen S. Colton
Commissioner

IMPORTANT! NOTIFICATION OF APPEAL RIGHTS FOLLOWS ON NEXT PAGE

ORDER DENYING MOTION FOR REVIEW
GLENDA GILES
PAGE THREE

NOTIFICATION OF APPEAL RIGHTS


Any party may ask the Commission to reconsider this Order by filing a Request for Reconsideration with the Commission within 20 days of the date of this Order. Alternatively, any party may appeal this Order to the Utah Court of Appeals by filing a Petition For Review with that Court within 30 days of the date of this Order.

CERTIFICATE OF MAILING

I, Alan Hennebold, certify that I did mail by prepaid first class postage a copy of the ORDER DENYING MOTION FOR REVIEW in the case of GLENDA GILES, Case Number 93-0693, on 17th day of June, 1994 to the following:

GLENDA GILES
P O BOX 411
KAYSVILLE, UTAH 84037

RICHARD SUMSION, ESQ.
WORKERS COMPENSATION FUND OF UTAH
P O BOX 57929
SALT LAKE CITY, UTAH 84157



Alan Hennebold
General Counsel
Industrial Commission of Utah

AH\92-0693o

C. ORDER DENYING REQUEST FOR RECONSIDERATION

THE INDUSTRIAL COMMISSION OF UTAH

GLEND A W. GILES,	*	
	*	
Applicant,	*	
	*	ORDER DENYING MOTION
vs.	*	FOR RECONSIDERATION
	*	
OAKRIDGE COUNTRY CLUB and	*	Case No. 92-0693
WORKERS COMPENSATION FUND OF UTAH,	*	
	*	
Defendants.	*	
	*	

Glenda W. Giles asks the Industrial Commission of Utah to reconsider its previous Order denying Ms. Giles' claim for workers' compensation benefits.

The Industrial Commission of Utah exercises jurisdiction over this Motion For Review pursuant to Utah Code Ann. §63-46b-13 and Utah Admin. Code R568-1-4.0.

DISCUSSION

In response to Ms. Giles' Motion For Reconsideration, the Commission has once again carefully reviewed the record in this matter. Based on its review, the Commission again concludes that the ALJ properly denied Ms. Giles' claim for workers' compensation benefits. As noted in the ALJ's decision:

. . . (Ms. Giles) may believe that she was exposed to chlorine gas, but that belief does not prove that an exposure actually occurred. Rather, the preponderance of the evidence indicates that the applicant was not exposed to chlorine gas on September 7, 1991. . . . (T)he applicant's extreme reaction or abnormality was a product of the applicant's organic mental disorder and prior psychiatric trauma and associated problems which were unrelated to her employment.

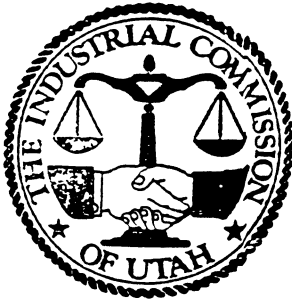
The foregoing conclusions of the ALJ are fully supported by persuasive medical opinion, as well as other evidence in the record.


ORDER DENYING MOTION FOR RECONSIDERATION
GLENDA GILES
PAGE TWO

ORDER

In light of the foregoing, the Commission reaffirms its prior decision in this matter and denies Ms. Giles' Motion For Reconsideration. It is so ordered.

DATED this 14TH day of July, 1994.




Stephen M. Hadley
Chairman


Thomas R. Carlson
Commissioner


Colleen S. Colton
Commissioner

NOTIFICATION OF APPEAL RIGHTS

Any party may appeal this Order to the Utah Court of Appeals by filing a Petition For Review with that Court within 30 days of the date of this order.

CERTIFICATE OF MAILING

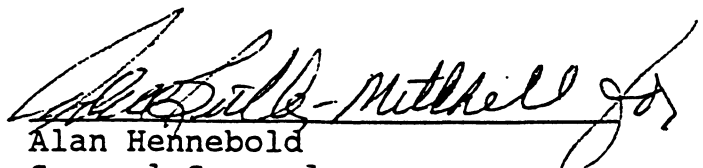
I, Alan Hennebold, certify that I did mail by prepaid first class postage a copy of the ORDER DENYING MOTION FOR RECONSIDERATION in the case of GLENDA GILES, Case Number 93-0693, on 14TH day of July, 1994 to the following:

RICHARD SUMSION, ESQ.
WORKERS COMPENSATION FUND OF UTAH
P O BOX 57929
SALT LAKE CITY, UTAH 84157

PHILLIP B. SHELL
DAY & BARNEY
45 EAST VINE STREET
MURRAY, UTAH 84107

AH\92-06930




Alan Hennebold
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Industrial Commission of Utah