

1994

Ivan D. Thompson v. Davis County, Workers Compensation Fund of Utah, and Industrial Commission of Utah : Brief of Respondent

Utah Court of Appeals

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Mark Dean; Alan L. Hennebold; Attorneys for the Respondent.

David J. Holdsworth; Attorney for the Petitioner.

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IN THE UTAH COURT OF APPEALS

IVAN D. THOMPSON

Petitioner,

vs.

DAVIS COUNTY, WORKERS
COMPENSATION FUND OF UTAH, and
INDUSTRIAL COMMISSION OF UTAH,

Respondents.

CASE NO. 940780-CA

Priority 7

BRIEF OF RESPONDENT'S
DAVIS COUNTY AND WORKERS COMPENSATION FUND OF UTAH

PETITION FOR REVIEW OF INDUSTRIAL COMMISSION'S ORDER

Mark Dean
Workers Compensation Fund of Utah
Attorney for the Respondent
392 East 6400 South
Salt Lake City, UT 84174-0929

David J. Holdsworth
Attorney for the Petitioner
185 S. State Street #500
Salt Lake City, UT

Alan L. Hennebold
Attorney for Industrial Commission of Utah
P. O. Box 146610
Salt Lake City, UT 84114-6610

UTAH COURT OF APPEALS
BRIEF

UTAH
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FILED NO. 940780CA

FILED

JUN 23 1995

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Attorney for the Petitioner
185 S. State Street #500
Salt Lake City, UT**

**Alan L. Hennebold
Attorney for Industrial Commission of Utah
P. O. Box 146610
Salt Lake City, UT 84114-6610**

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STATEMENT OF JURISDICTION

The Court of Appeals has jurisdiction to review this order of the Industrial Commission of Utah ("the Commission") pursuant to section 35-1-86, section 63-46b-16 of the Utah Code Annotated.

STATEMENT OF THE ISSUES

Issue #1. Did the Commission require Ivan D. Thompson ("the Applicant") to prove medical causation by a standard of proof other than the preponderance of the evidence?

Whether the correct standard of proof was applied is a question of law. Questions of law are reviewed under a correction-of-error standard, with no deference given to the Commission.

Willardson v. Indus. Comm'n., 856 P.2d 371, 374 (Utah App. 1993).

Issue #2. Was the Commission correct in determining that there was no medical causation established between the Applicant's seizures and the presence of chemicals in the workplace?

Medical causation is a question of fact, therefore the correct standard of review is whether the Commission's findings are supported by substantial evidence when viewed in light of the whole record before the court. Virgin v. Bd. of Review of the Indus. Comm'n., 803 P.2d 1284, 1287 (Utah App. 1990). King v. Indus. Comm'n., 850 P.2d 1281, 1285 (Utah App. 1993).

Issue #3. Was the Commission correct to deny medical expense benefits to the Applicant even though the medical panel determined that the medical expenses were reasonable and justified?

The legislature granted the Commission statutory discretion to adopt the findings and the

decisions of the medical panel. Utah Code Ann. Section 35-1-77(2)(d) (1994). Where there is such discretion, the standard of review is under section 63-46b-16(4)(h)(i) for abuse of discretion. King v. Indus. Comm'n., 850 P.2d 1281, 1286 (Utah App. 1993). In addition, under Section 35-1-45 of the Utah Code Annotated, employers and their insurance carriers are liable for medical expenses only if there is a compensable injury.

DETERMINATIVE STATUTES

Statutes believed to be determinative include Section 35-1-45 and Section 35-1-77 of the Utah Code Annotated. (These sections are reproduced in the Apendum.)

STATEMENT OF THE CASE

The Applicant filed this **appeal** of a final decision by the Industrial Commission denying workers' compensation **benefits**. **After** convening a medical panel, the Administrative Law Judge ("the ALJ") denied benefits **because of** the lack of medical causation between the Applicant's seizures and exposure to a Clorox **cleaning** solution used by the Applicant at work. The Commission denied the Applicant's motion for review.

The following facts are relevant to the issues up for review.

1. The Applicant worked as an animal control officer for the Davis County Animal Control Division from 1991 to August 11, 1993. (R.65, 67.)
2. The Applicant's job duties included picking up stray animals which were put in portable kennels in back of the Applicant's pickup truck. Once the animals were removed, the portable kennels were cleaned with a Clorox cleaning solution. The Clorox cleaning solution was

a mixture of 30 parts water to one part bleach. The sprayer was marked as to the correct amount of Clorox to use for the Clorox/water mixture. The Clorox was of the type that could be bought in any grocery store. (R.65-66, 67.)

3. Cleaning the kennels with the Clorox cleaning solution took between 30 seconds and 1 minute. The Applicant would have to clean two to six kennels per day, however cleaning two kennels per day was typical. (R.66.)

4. Other chemicals used at the animal control facilities, but not by the Applicant included Excidor, a degreaser used by the maintenance personnel. Lemonfect, a disinfectant, was used to disinfect the kennels. Leashes used to restrain animals were dropped into a bucket containing Parvicide, an antiviral agent. (R.66, 67.)

5. On June 1, 1993, and July 8, 1993 the Applicant suffered seizures. The Applicant had used the Clorox cleaning solution on these days. (R.66.)

6. After the first seizure, the Weber County Crime Lab found no trace of any chemicals on the Applicant's pants. The investigation was performed in response to the allegation that perhaps the Applicant had been poisoned by someone who was "out to get him" for some unspecified reason. (R.67; note that the ALJ indicates this investigation was done after the second seizure on July 8, however it was completed after the first seizure.)

7. The Applicant was under various stresses during the time he was employed as an animal control officer. He had recently sold his home, and was residing with in-laws and was trying to refinance a home. The Applicant was also feeling pressure from work from his supervisor, for not producing or performing up to her standards. (R.67.)

8. The Applicant suffered two head injuries prior to his seizures which warranted

medical attention. In 1982, the Applicant suffered a concussion, and was hospitalized overnight, after being knocked "silly" in a fundraiser boxing match. In 1988, the Applicant suffered another concussion when he hit his head while loading a washing machine into a pickup truck. The Applicant was taken to the emergency room. (R.65.)

9. The Applicant's physician, Dr. Roberta Hallquist, concluded that the Applicant suffered two generalized seizures, "post-traumatic variety, related to a remote concussion from a boxing injury in his teens, and an indirect head trauma due to being jarred or charged by a bull a year ago at work, plus occupational exposure to chlorine, and other chemical exposure on [sic] the work place. He has been maintained on anticonvulsant therapy with Dilantin, and has had an abnormal EEG." (R.178.)

10. The Applicant's other physician, Dr. Dennis R. Peterson, stated "[a]s far as irritants that may have contributed to that first episode, Dr. Holquist [sic], the neurology specialist who has consulted on the case, felt that chlorine from using Chlorox in the standard way for cleansing the cage that he uses in his truck, etc., could make a significant contribution towards setting off an irritable focus." (R.180.)

11. The independent medical evaluation, done by Dr. Fumisuke Matsuo, concluded that Clorox is an irritant and "overexposure would probably be obvious because of local mucosal irritation and possibly upper respiratory symptoms. It does not appear that [the Applicant] has suffered either acute or chronic symptoms suggestive of such toxic exposure. . . . At this time it would appear prudent to manage his seizure disorder as a condition of unknown etiology" (R.68, 166.)

12. The ALJ appointed a medical panel consisting of Dr. Douglas E. Rollins, Director,

Center for Human Toxicology, and Dr. Madison H. Thomas, a neurologist. (R.68.)

13. The medical panel conclusions, adopted by the ALJ were the following:

a. There was no medically demonstrable causal connection between the Applicant's grand mal seizures on June 1 and July 8, 1993, and his work as an animal control officer for Davis County during 1991 through 1993.

b. The Applicant's seizure problem consisted of two highly probable grand mal seizures.

c. The Applicant did not have a nonwork-related disability which was affected by his Davis County work.

d. The medical care the Applicant received since June 1, 1993, was not necessitated by exposure to chemicals while working for Davis County.

e. There is no future medical care which can reasonably be expected to be necessitated by the Applicant's exposure.

f. The Applicant does not appear to have any permanent impairment except for the anosmia and the seizure disorder, both which are considered nonindustrial. (R.68-69.)

SUMMARY OF THE ARGUMENT

The ALJ used the correct standard of proof to determine whether the Applicant's seizures were triggered by his use of a Clorox cleaning solution while employed by Davis County. The ALJ's order and the record as a whole indicate that the ALJ applied the preponderance of evidence standard to determine medical causation. There is nothing in the ALJ's order which suggests the ALJ required medical causation be proven by "certainty."

The Commission's decision to deny workers' compensation benefits is supported by substantial evidence. The Applicant has failed to marshal the evidence supporting the Commission's finding of no medical causation, and show that despite the supporting facts the Commission's decision is not supported by substantial evidence.

Finally, the Commission correctly denied workers' compensation benefits in the form of medical expenses even though the medical panel commented that the medical expenses were reasonable. The Commission has no authority to grant workers' compensation benefits once it determines there is no compensable injury.

ARGUMENT

I. THE COMMISSION'S CONCLUSION THAT THE APPLICANT'S SEIZURES WERE NOT WORK RELATED WAS BASED ON THE CORRECT STANDARD OF PROOF - THE PREPONDERANCE OF EVIDENCE.

The Applicant must prove by the preponderance of evidence that his seizures were caused by the exposure to a Clorox cleaning solution in the workplace. See, Lipman v. Indus. Comm'n., 592 P.2d 616 (Utah 1979) (the standard of proof to prove compensability is a preponderance of evidence). The preponderance of evidence standard requires the court to balance the evidence, using its discretion to weigh its importance and credibility, and decide whether it is more likely than not that the evidence supports the claimant's position. See, generally, State v. Hodges, 798 P.2d 270 (Utah App. 1990). The ALJ used the preponderance of evidence standard to deny workers' compensation benefits to the Applicant.

To determine whether the correct standard of proof was used, a reviewing court considers both the record and the ALJ's order as a whole. Willardson v. Indus. Comm'n., 856 P.2d 371,

376 (Utah App. 1993) (ALJ's use of the word "significant" was unintended surplusage and did not support the allegation that the wrong standard of proof was used to show medical causation). In the instant case, the ALJ, after stating his findings of fact, concluded "[u]nder such circumstances, *it has not been shown to a preponderance* that the seizures were medically caused by the work at Davis County" (R.70, emphasis added.) The ALJ's conclusions of law stated "[t]here is insufficient evidence to show that [the Applicant's] grand mal seizures which occurred on June 1, 1993 and July 8, 1993 arose out of and in the course of exposure to Clorox" (R.70.)

A review of the ALJ's order as a whole indicates the ALJ considered all the evidence presented by the Applicant. The ALJ's findings of fact listed the conclusion of the Applicant's physician, the independent **medical evaluation**, and the medical panel's conclusions. The ALJ's exercised his discretion to **give more weight** to the findings of the medical panel (which included a physician who specialized in toxicology) and the independent medical evaluation, and less weight to the Applicant's own physician. The ALJ also listed seven factors unrelated to work which were likely causative factors. (R.69-70.) The ALJ determined that "it was *unlikely* that the exposure to the Clorox cleaning solution was sufficient to cause any impact on the Applicant's cerebral functions." (R.69, emphasis added.) The ALJ's order as a whole demonstrates that the ALJ determined medical causation using the preponderance of evidence standard. Based on a review of the ALJ's decision, the Commission also determined that the correct standard of proof was applied.

The Applicant asserts that the ALJ required medical causation be proven by certainty. The Applicant points to no language in the order, other than the ALJ's conclusion that there was

"insufficient" evidence to support medical causation, to support this allegation. (Petitioner's Brief, p.13.) There is nothing in the ALJ's order which supports the Applicant's allegation that "[t]he ALJ erroneously assumed that the question of medical causation needed to be answered in absolute terms." (Petitioner's Brief, p. 14.)

In conclusion, the ALJ applied the preponderance of the evidence standard to determine medical causation. The ALJ considered the evidence presented by the Applicant, but placed greater weight on the findings of the medical panel that the Applicant's seizures were not triggered by exposure to a Clorox cleaning solution at work. The ALJ did not require medical causation be proven with certainty.

II. THE ALJ'S CONCLUSION THAT THE APPLICANT FAILED TO SHOW HIS EXPOSURE TO CLOROX CAUSED HIS SEIZURES IS SUPPORTED BY SUBSTANTIAL EVIDENCE.

A. The Applicant Failed to Show That The ALJ's Finding Of No Medical Causation Is Against the Clear Weight of Evidence.

Medical causation is a question of fact; questions of fact should be affirmed if they are supported by "substantial evidence when viewed in light of the whole record before the court."

Virgin v. Bd. of Review of the Indus. Comm'n., 803 P.2d 1284, 1287 (Utah App. 1990).

To challenge a findings of fact, a claimant is required to marshal "all of the evidence supporting the findings, then show that despite the supporting facts, and in light of the conflicting or contradictory evidence, the findings are not supported by substantial evidence." King v. Indus. Comm'n., 850 P.2d 1281, 1285 (Utah App. 1993). Smallwood v. Bd. of Review of the Indus. Comm'n., 841 P.2d 716, 718-19 (Utah App. 1992) (the claimant must marshal the evidence in support of the finding and then show the challenged finding is so lacking in support as to be

against the clear weight of evidence, making it clearly erroneous).

The Applicant has failed to marshal the evidence supporting the finding that his use of a Clorox cleaning solution did not cause or contribute to his seizures. The Applicant has not shown that despite the conclusions of the medical panel that it was "quite unlikely" that the use of the Clorox could trigger his seizures, the ALJ's finding was not supported by substantial evidence. The Applicant fails to draw attention to any flaw in the evidence upon which the ALJ relied. See, Stewart v. Bd. of Review of the Indus. Comm'n., 831 P.2d 134, 138 (Utah App. 1992). The Applicant has not shown that the finding of no medical causation is against the clear weight of evidence.

The Applicant has not met the procedural requirements for review by not marshalling the evidence, and showing that in spite of this evidence, the ALJ's findings were not supported by substantial evidence. Therefore, ALJ's and the Commission's denial of workers' compensation benefits to the Applicant should be affirmed.

B. The Applicant Failed To Establish That His Seizure Was Both Legally And Medically Caused By His Exposure to Clorox.

The Applicant must establish by the preponderance of evidence that his exposure to Clorox caused his seizures, or contributed to the cause of his seizures. In Allen v. Indus. Comm'n., 729 P.2d 15, 25 (Utah 1986), the court outlined the two-part test to determine causation in workers' compensation cases. To establish legal causation, a claimant must show legal causation and medical causation to recover workers' compensation benefits. Id. A claimant with pre-existing conditions "must show that the employment contributed something substantial to increase the risk he already faced in everyday life." Id. To show increased risk, a claimant

must show an "unusual or extraordinary exertion" to prove legal causation. Id. at 26.

The Applicant used a Clorox cleaning solution a few minutes a day. The Clorox was the type sold in grocery stores for consumer use. In addition, the Clorox cleaning solution used was a mixture of thirty parts water and one part Clorox. This exposure or "exertion" hardly seems unusual or extraordinary. The Applicant provides no evidence which demonstrates that this exposure is substantially different than any regular use of household cleaners.

Even if there is legal causation, a claimant still must establish medical causation, the second part of the Allen test. A claimant must show, by a preponderance of evidence that there is a "medically demonstrable causal link between the work-related exertions and the unexpected injuries that resulted from those strains." Id. at 27.

The Applicant's evidence regarding medical causation consists of conclusory statements by his two treating physicians that his seizures were caused by his exposure to chemicals. There is no evidence that these physicians evaluated the acute and chronic toxicity characteristics of the active chemical in Clorox (sodium hypochlorite). (In fact, Dr. Hallquist stated that the Applicant exposure was to chlorine. (R.178.) Dr Peterson seemingly repeated this conclusion with no independent evaluation of his own. (R.180.)) This was the only evidence the Applicant presented on medical causation.

In contrast, both the independent medical evaluation ("the IME") and the medical panel evaluated the toxicity characteristics of sodium hypochlorite to determine if exposure to the Clorox cleaning solution could have triggered the Applicant's seizure. The medical panel concluded there was no medical causation stating:

Our conclusion on this is based on an effort to balance various factors that may reasonably

be considered as contributory to the occurrence of isolated grand mal seizures. On the one hand, we have the suggestion that one of more of the chemical substances [the Applicant] was exposed to triggered these seizures. *It seems quite unlikely that the exposure to the Clorox solution reached sufficient levels to cause any impact on his cerebral function* since there does not appear to have been any of the observed prodromes [sic] of significant respiratory distress which ordinarily accompanied even slight exposures to any Clorox type spray. There is secondly, a significant delay in the occurrence after the last exposure, during which he was apparently able to function well, suggesting there was no acute involvement. Likewise, *it is not reasonable that without major noticeable respiratory distress, that there would be any continuing effects of the Clorox type exposure on an accumulative basis.* The other two, the detergent and the Parvosol, are not of the nature which are likely to produce a convulsive seizure, especially where there was no indication of effect at the time of exposure. (R.43, emphasis added.)

The Applicant argues that the ALJ, the IME and "especially the medical panel" failed to consider whether the Applicant's exposure to Clorox could have contributed to his seizures considering his previous head injuries. The medical panel's reports indicates that the panel did in fact consider and balance all the factors which could have contributed to the Applicant's seizure. There is nothing in the medical panel's report which supports the Applicant's assertion that the panel "approached this case in an either/or, all or nothing, manner." (Petitioner's Brief, p.26.)

To summarize, the Applicant failed to establish by the preponderance of evidence that his work exposure to the Clorox cleaning solution caused or contributed to his seizures. The medical panel considered all contributing factors which could have triggered the Applicant's seizures. Based on the toxicity characteristics of sodium hypochlorite (the active ingredient in Clorox), the medical panel concluded it was "quite unlikely" that the Applicant's use of the Clorox cleaning solution could have triggered his seizures. Accordingly, the ALJ adopted the medical panels findings.

C. The ALJ's Finding Of No Medical Causation Is Supported By Substantial Evidence.

The ALJ's conclusion that the Applicant has failed to establish medical causation is supported by substantial evidence. Substantial evidence is "that which a reasonable person might accept as adequate to support a conclusion." King v. Indus. Comm'n., 850 P.2d 1281, 1285 (Utah App. 1993) (citations omitted). A substantial evidence review "simply accords deference to the agency where two reasonable, yet conflicting conclusions could have been reached." Id.

The evidence supporting the ALJ's conclusion included the findings of both the IME and the medical panel that the Applicant's use of the Clorox cleaning solution was insufficient to trigger the Applicant's seizures. This decision was based on the acute and chronic toxicity characteristics of the active chemical in Clorox (sodium hypochlorite) and the conditions under which the Applicant used the Clorox cleaning solution. The ALJ's decision was also based on non-work related factors which could have caused the seizures. These factors included a prior history of head injuries, the Applicant's anosmia, an EEG abnormality, low blood sugar during one of his seizures, and long standing evidence of asymmetry of the lateral ventricles of the brain. (R.69-70.)

The findings by the ALJ and the Commission are supported by substantial evidence. Therefore, the Commission's decision to deny workers' compensation benefits to the Applicant should be affirmed.

III. THE APPLICANT IS NOT ENTITLED TO PAYMENT OF MEDICAL EXPENSES BECAUSE THERE WAS NO COMPENSABLE INJURY.

The ALJ correctly denied the payment of the Applicant's medical expenses because there was no compensable injury. Section 35-1-45 of the Utah Code provides that an employee who is

injured by an "accident arising out of and in the course of his employment . . . shall be paid compensation for loss sustained on account of the injury The responsibility of compensation and payment of medical, nursing, and hospital services and medicines . . . shall be on the employer and its insurance carrier" Utah Code Ann. § 35-1-45 (1994). Employers and their insurance carrier are not responsible for medical expenses unless there is a compensable injury. As the ALJ and Commission determined there was no compensable injury, workers' compensation benefits in the form of medical expenses are not the responsibility of Davis County nor the Workers Compensation Fund of Utah.

The Applicant argues that because the medical panel stated that the medical care the Applicant received was justified, the ALJ should have required the Workers Compensation Fund of Utah to pay medical expenses. This argument is without merit for several reasons.

Section 35-1-77 of the Utah Code Annotated gives the Commission discretion in adopting the findings of the medical panel if there is other substantial evidence in the case supporting a contrary finding. Where there is statutory discretion given to an agency, the appropriate standard of review is the abuse of discretion. King v. Indus. Comm'n., 850 P.2d 1281, 1286 (Utah App. 1993). The ALJ properly exercised his discretion not to grant medical expenses even though the medical panel stated that the medical care was justified. The "substantial evidence" requirement in section 35-1-77 was met by the medical panel's finding that the Applicant's seizures were not work related. Workers' compensation benefits, including medical expenses, are granted only when there is a compensable injury. The Commission does not have the discretion to grant workers' compensation benefits unless it determines the Applicant's condition was both legally and medically caused by an industrial injury.

In addition, the Commission is the ultimate fact finder in workers' compensation cases. Virgin v. Bd. of Review of the Indus. Comm'n., 803 P.2d 1284, 1289 (Utah App. 1990). In Virgin, the claimant argued that because the medical panel stated that his industrial injury aggravated a pre-existing condition, he was entitled to workers' compensation benefits even though the medical panel was unable to clearly assign any degree of impairment to his industrial accident. Id. at 1287. In upholding the Commission's denial of benefits, the court stated that "the Commission will not be reversed simply because it has chosen to rely on one portion of the medical panel report and to reject other inconsistent portions." Id. at 1289-90.


In the instant case, the ALJ and the Commission relied on the medical panel's findings of no medical causation to conclude there was insufficient evidence to show that the Applicant's seizures arose out of and in the course of the use of Clorox and other chemicals while employed by Davis County. Thus, the Commission appropriately denied workers' compensation benefits because there was no compensable injury.

CONCLUSION

The Commission correctly required the Applicant to prove his seizures were the result of his use of a Clorox cleaning solution by the preponderance of evidence. The Commission decision to deny workers' compensation benefits to the Applicant is supported by substantial

evidence. Therefore, the Workers Compensation Fund of Utah requests this court affirm the Commission's denial of workers' compensation benefits to the Applicant.

Respectfully submitted this 23rd day of June, 1995.



MARK D. DEAN
Attorney for Respondents

MAILING CERTIFICATE

I hereby certify that on the _____ day of June, 1995 a copy of the attached Brief of Respondents Davis County and Workers Compensation Fund of Utah in the case of Ivan D. Thompson was mailed, postage pre-paid to the following:

David J. Holdsworth
Attorney for the Petitioner
185 S. State Street #500
Salt Lake City, UT

Alan L. Hennebold
Attorney for Industrial Commission of Utah
P. O. Box 146610
Salt Lake City, UT 84114-6610

APPENDUM

1. Statutes
2. Order Denying Motion for Review
3. Findings of Fact, Conclusions of Law and Order
4. Medical Panel Report
5. Independent Medical Evaluation

STATUTES

§ 35-1-45. Compensation for industrial accidents to be paid.

Each employee mentioned in Section 35-1-43 who is injured and the dependents of each such employee who is killed, by accident arising out of and in the course of his employment, wherever such injury occurred, if the accident was not purposely self-inflicted, shall be paid compensation for loss sustained on account of the injury or death, and such amount for medical, nurse, and hospital services and medicines, and, in case of death, such amount of funeral expenses, as provided in this chapter. The responsibility for compensation and payment of medical, nursing, and hospital services and medicines, and funeral expenses provided under this chapter shall be on the employer and its insurance carrier and not on the employee.

Utah Code Ann. § 35-1-45 (1994)

35-1-77. Medical panel - Medical director or medical consultants - Discretionary authority of commission to refer case - Findings and reports - Objections to report - Hearing - Expenses.

(1) (a) Upon the filing of a claim for compensation for injury by accident, or for death, arising out of and in the course of employment, and if the employer or its insurance carrier denies liability, the commission may refer the medical aspects of the case to a medical panel appointed by the commission.

(b) When a claim for compensation based upon disability or death due to an occupational disease is filed with the commission, the commission shall, except upon stipulation of all parties, appoint an impartial medical panel.

(c) A medical panel shall consist of one or more physicians specializing in the treatment of the disease or condition involved in the claim.

(d) As an alternative method of obtaining an impartial medical evaluation of the medical aspects of a controverted case, the commission may employ a medical director or medical consultants on a full-time or part-time basis for the purpose of evaluating the medical evidence and advising the commission with respect to its ultimate fact-finding responsibility. If all parties agree to the use of a medical director or medical consultants, they shall be allowed to function in the same manner and under the same procedures as required of a medical panel.

(2) (a) The medical panel, medical director, or medical consultants shall make such study, take such X-rays, and perform such tests, including post-mortem examinations if authorized by the commission, as it may determine to be necessary or desirable.

(b) The medical panel, medical director, or medical consultants shall make a report in writing to the commission in a form prescribed by the commission, and also make such additional findings as the commission may require. In occupational disease cases, the panel shall certify to the commission the extent, if any, of the disability of the claimant from performing work for remuneration or profit, and whether the sole cause of the disability or death, in the opinion of the panel, results from the occupational disease and whether any other causes have aggravated, prolonged, accelerated, or in any way contributed to the disability or death, and if so, the extent in percentage to which the other causes have so contributed.

(c) The commission shall promptly distribute full copies of the report to the applicant, the employer, and its insurance carrier by certified mail with return receipt requested. Within 15 days after the report is deposited in the United States post office, the applicant, the employer, or its

insurance carrier may file with the commission written objections to the report. If no written objections are filed within that period, the report is considered admitted in evidence.

(d) The commission may base its finding and decision on the report of the panel, medical director, or medical consultants, but is not bound by the report if other substantial conflicting evidence in the case supports a contrary finding.

(e) If objections to the report are filed, the commission may set the case for hearing to determine the facts and issues involved. At the hearing, any party so desiring may request the commission to have the chairman of the medical panel, the medical director, or the medical consultants present at the hearing for examination and cross-examination. For good cause shown, the commission may order other members of the panel, with or without the chairman or the medical director or medical consultants, to be present at the hearing for examination and cross-examination.

(f) The written report of the panel, medical director, or medical consultants may be received as an exhibit at the hearing, but may not be considered as evidence in the case except as far as it is sustained by the testimony admitted.

(g) The expenses of the study and report of the medical panel, medical director, or medical consultants and the expenses of their appearance before the commission shall be paid out of the Employers' Reinsurance Fund.

Utah Code Ann. § 35-1-77 (1994).

ORDER DENYING MOTION FOR REVIEW

RECEIVED

DEC 5 1994

Workers Compensation Fund
Legal Department

THE INDUSTRIAL COMMISSION OF UTAH

IVAN D. THOMPSON

Applicant,

vs.

DAVIS COUNTY and WORKERS
COMPENSATION FUND OF UTAH,

Defendants.

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ORDER DENYING
MOTION FOR REVIEW

Case Nos. 93-1036
and 93-1037

Ivan D. Thompson seeks review of an Administrative Law Judge's Order which denied Mr. Thompson's claim for compensation under the Utah Workers' Compensation Act.

The Industrial Commission of Utah exercises jurisdiction over this Motion For Review pursuant to Utah Code Ann. §63-46b-12, Utah 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. In summary, Mr. Thompson worked as an animal control officer for Davis County. His employment required that he use various disinfecting agents to clean animal cages.

On June 1 and again on July 8, 1993, Mr. Thompson experienced grand mal seizures while at work. Dr. Hallquist, Mr. Thompson's treating physician, attributed such seizures to Mr. Thompson's exposure to the disinfecting agents used at his work. Dr. Matsuo, from the University of Utah's Neurology Department, concluded that Mr. Thompson's seizures were not caused by the disinfecting agents.

Due to the difference of medical opinion in this matter, the ALJ appointed a medical panel which reviewed Mr. Thompson's records and examining Mr. Thompson himself. The panel found no causal connection between Mr. Thompson's seizures and the disinfecting agents used at his work.

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Based on the medical panel's report, the ALJ concluded Mr. Thompson had failed to establish that his work caused his seizures. The ALJ therefore denied Mr. Thompson's claim for workers' compensation benefits.

DISCUSSION AND CONCLUSIONS OF LAW

The Utah Workers' Compensation Act requires payment of compensation and medical benefits to workers injured by accident arising out of and in the course of employment. It is the obligation of the worker claiming such benefits to establish a causal connection between work and injury. In this case, the ALJ concluded Mr. Thompson had failed to prove a causal relationship between his work and his injuries.

Mr. Thompson's Motion For Review alleges the ALJ required Mr. Thompson to prove causation "to a certainty," thereby applying a too-stringent standard of proof on Mr. Thompson. However, the Commission's review of the ALJ's decision shows that the ALJ applied the correct standard of proof, preponderance of the evidence, to Mr. Thompson's claim.

Mr. Thompson also contends the ALJ's decision failed to address Mr. Thompson's assertion that exposure to disinfecting agents at work may have combined with his preexisting sensitivity to chemicals, thereby resulting in a compensable industrial injury. While a combination of nonindustrial and industrial causes can, under some circumstances, combine to produce a compensable injury, it is necessary for the applicant to establish such circumstances by a preponderance of the evidence. Mr. Thompson has failed to do so in this case.

Finally, Mr. Thompson alleges the ALJ erred in denying all workers' compensation benefits. In effect, Mr. Thompson suggests that the ALJ should have awarded medical expenses to Mr. Thompson, despite the ALJ's conclusion that Mr. Thompson did not suffer a compensable injury. The Commission finds no merit to this contention. Medical benefits under the Workers' Compensation Act are limited to payment for medical expenses necessary to care for an industrial injury. Here, there was no industrial injury.

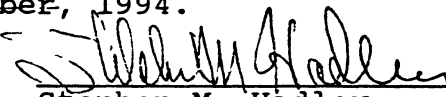
ORDER DENYING MOTION FOR REVIEW
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ORDER


The Commission affirms the decision of the ALJ and dismisses Mr. Thompson's Motion For Review. It is so ordered.

Dated this 2nd day of ^{December} ~~November~~, 1994.




Stephen M. Hadley
Chairman


Thomas R. Carlson
Commissioner


Colleen S. Colton
Commissioner

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.

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CERTIFICATION OF MAILING

I certify that a copy of the foregoing Order Denying Motion For Review in the matter of Ivan D. Thompson, Case No.s 93-1036 and 93-1037, was mailed, first class, postage prepaid, this 2nd day of December, 1994, to the following:

DAVID J. HOLDSWORTH
ROMNEY & CONDIE
185 SOUTH STATE STREET, SUITE 500
SALT LAKE CITY, UTAH 84111

ERIE V. BOORMAN
EMPLOYER'S REINSURANCE FUND
P O BOX 146611
SALT LAKE CITY, UTAH

MARK DEAN
WORKERS COMPENSATION FUND OF UTAH
392 EAST 6400 SOUTH
P O BOX 57929
SALT LAKE CITY, UTAH 84157-0929


Adell Butler-Mitchell
Support Specialist
Industrial Commission of Utah

**FINDINGS OF FACT, CONCLUSIONS OF LAW
AND ORDER**

INDUSTRIAL COMMISSION OF UTAH

Case No. 93-1036

Ø. THOMPSON,

Applicant,

vs.

**DAVIS COUNTY and/or WORKERS
COMPENSATION FUND OF UTAH,
and/or EMPLOYERS' REINSURANCE
FUND 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 300 South, Salt Lake City, Utah on
February 2, 1994 at 3:00 o'clock p.m. pursuant to
Order and Notice of the Commission.

BEFORE: Benjamin A. Sims, Administrative Law Judge.

APPEARANCES: The applicant, Ivan B. Thompson, was present and
represented by David A. Holdsworth, Attorney at
Law.

The defendant employer, Davis County, and its
insurer, the Workers Compensation Fund of Utah,
were represented by Mark Dean, Attorney at Law.

The Employers' Reinsurance Fund was represented by
Erie V. Boorman, Attorney at Law.

STATEMENT OF THE CASE:

This hearing was initially scheduled for December 12, 1993.
The applicant underwent surgery, and upon his request and the
concurrence of the Workers Compensation Fund of Utah (WCF), the
hearing was delayed until February 2, 1994.

The preliminary findings of fact, and the proposed questions
for the medical panel were sent to the parties on February 17, 1994
allowing them 15 days to make objections. The applicant proposed
some changes to the preliminary findings and instructions to the
medical panel, and where the requested changes were not
inconsistent with the facts as determined from the hearing, the
proposed changes were made. After receipt of the medical films and
X-rays, the case was referred to the medical panel on March 4,
1994, and the medical panel report was received by the Commission
on June 9, 1994.

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On June 9, 1994, the medical panel report was sent to the parties with instructions to reply not later than the close-of-business on June 24, 1994. Objections were received from the applicant by fax on June 24, 1994. No objections were received from the defendants.

The objections from the applicant to the medical panel report have been reviewed.

FINDINGS OF FACT:

1. The applicant, Ivan D. Thompson, at the time of the alleged injuries on June 1, 1993 and July 8, 1993, was employed by Davis County Animal Control.

2. The applicant had the following work and educational experiences: From 1981-83 he attended college; from 1983-85 he served and completed a mission for the Church of Jesus Christ of Latter-day Saints; in 1985 he returned home and thereafter in 1986-87 he worked for the California Protection Agency; in 1988-89 he worked for Beehive Clothing as a preshrink material fabric operator; in 1990 he worked for Sysco Intermountain Foods, and in 1991 he went to work for Davis County as an animal control officer.

3. As an animal control officer, the applicant picked up animals; answered emergency calls in relation to animals; helped return livestock; sold animal licenses, and performed other related duties.

4. In 1982 while attending college the applicant sustained a head injury while boxing in a fund-raiser when he was knocked "silly," and was hospitalized overnight. He was told by medical personnel that he had suffered a concussion.

5. In 1988 the applicant suffered another concussion when he was loading a washing machine into a pickup truck and hit his head on the crest of the door. He went to the emergency room on the same day.

6. The applicant has no sense of smell (anosmia).

7. After working for a short time as an animal control officer prior to the alleged injuries related to the instant claim, a large animal described as a bull, cow, or calf, depending on which witness was testifying, knocked the applicant to the ground. He experienced pain in his chest, and he was in the hospital overnight.

8. Among the applicant's duties was the task to pick up animals. Depending on the size of the animal, the applicant would

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place the critter into a kennel which was approximately the following dimensions: one foot by one foot by one foot (which was called a "cat" kennel), or three feet by two feet and one half foot by two and one half feet (dog kennel), or a three feet by three feet by four feet (large dog kennel). The applicant would then take the portable kennel, and place it in the bed of his pickup truck which has a covered shell on the back of a pickup truck.

9. The applicant would drive his pickup into the garage facility which was described as "large enough to house a dump truck." The applicant would take the portable kennel out of his pickup truck, and place it on the floor of the garage. If the animal was a dog, the leash used to restrain the animal would be dropped into a bucket containing Parvo disinfectant, a disinfectant for parvovirus. The last step in the process of handling the animal would be for the applicant to spray the portable dog kennel with a solution of Clorox and water. The Clorox was mixed to a solution containing 30 parts of water to one part of Clorox. The applicant described the Clorox as the same as that which can be bought at any grocery store.

10. The clorox spray typically took from 30 seconds to one minute per kennel and the applicant would have to spray anywhere from two to six kennels per day. A typical day included only two kennels.

11. On June 1, 1993, the applicant cleaned his portable kennel before going back into the field. He sprayed it with water, used a scrub brush, and the Clorox water spray. He got into his truck, but does not remember anything after that. The applicant's next recollection was when he saw his wife that afternoon. He experienced tongue pain at which time he went to his doctor. The applicant was "soaking wet from the waist down," and had some green vegetation resembling moss on his pants.

12. At that time the applicant was admitted to the hospital and was kept there for three days. Thereafter he returned to work on June 22, 1993.

13. On July 8, 1993, the applicant picked up a dog and then cleaned his kennel with the water and clorox. He went home for lunch. The applicant next remembered that "the paramedics came through the back door." He looked down and saw vomit on the floor. He was placed in an ambulance, and was taken to Lakeview Hospital in Bountiful.

14. The Parvicide is an antiviral agent used to kill a virus (Parvo) which is exclusive to dogs.

15. The Clorox solution was mixed by a maintenance worker and

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was contained in a portable weed sprayer. The kennels would be sprayed in the garage, and would be left to air dry. The animal control officer would then take a dry kennel, and put it into his truck.

16. The sprayer was marked as to the correct amount of Clorox which should be used in preparation of the clorox/water mixture.

17. The facilities were inspected regularly by the Humane Society of Utah to insure that all substances in use would not be injurious to animals, in the event the animals stood in the liquids.

18. Other chemicals used by the animal control facilities, but not by the other officers or the applicant, was Excidor, a degreaser used by maintenance personnel. The degreaser was used to remove grease excreted by dogs. Also previously used was Lemonfect which was the officers to disinfect kennels prior to the use of the clorox solution.

19. Mr. Thompson was under various stresses during the time he was employed as an animal control officer. He had recently sold his home; he was residing with in-laws; and, he was trying to refinance a home. The employer was also causing pressure on the applicant for not producing or performing up to her standards. The record indicates that the applicant was having trouble with his license sales.

20. There was no evidence presented that Davis County sprayed insect spray or other contaminants around the animal control facility within several days prior to the applicant's industrial incidents. The evidence shows that mosquito spray was not used within the zone in which the applicant would have expected to be working.

21. The Weber County Crime Lab found no trace of any poisonous chemicals on the pants that the applicant was wearing at the time of admission to the hospital on July 8. This investigation was performed in response to an allegation that perhaps the applicant had been poisoned by someone who was "out to get him" for some unspecified reason.

22. On June 22, 1993, the applicant was depressed and withdrawn. He indicated that he was tired and ready to collapse.

23. The applicant was terminated on August 13, 1993, from his position because the employer thought that he was "dishonest," and had embellished many of his problems.

24. No other employee has ever had any adverse reaction to

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the chemicals at the facility.

25. Dr. Roberta Hallquist, a physician at the Lakeview Hospital, determined over a period of time that the applicant had experienced grand mal seizures as a result of the applicant's exposure to the Clorox solution and other chemicals used at his employment. Dr. Hallquist prescribed Dilantin for the applicant.

26. Dr. Fumizuke Matsuo from the University of Utah Department of Neurology evaluated the applicant and his medical records and radiological study reports, but was not able to review the applicant's original films. Dr. Matsuo concluded that "it does not appear that Mr. Thompson" had suffered either acute or chronic symptoms suggesting a toxic exposure." He was not sure if he had any strong reasons to consider neuro-toxicity of sodium hypochlorite as an explanation for the applicant's seizures, although he indicated that it would appear prudent to manage Mr. Thompson's seizure disorder as a condition of unknown etiology. He further agreed with Dr. Hallquist's decision to place the applicant on an anti-epileptic drug. Dr. Matsuo concluded that reevaluation in one year was recommended and that the applicant could come off phenytoin if Mr. Thompson remained without recurrent symptoms. With regard to the contribution of the Clorox solution (sodium hypochlorite), he did not feel that there was any strong reason to consider that solution as a toxic substance.

27. The medical panel consisted of Dr. Rawlins (toxicologist) and Dr. Thomas (neurologist and chair). The panel met on May 17, 1994, reviewed the file and history, and examined the applicant as well as discussed the applicant's problems with the applicant's wife.

28. The panel concluded in terms of reasonable medical probability the following:

a. There is not a medically demonstrable causal connection between the applicant's 1 June 1993 and 8 July 1993 grand mal seizures and his work as an animal control officer in Davis County during 1991 through 1993.

b. The applicant's seizure problem consisted of two highly probable grand mal seizures.

c. The applicant did not have a nonwork-related disability which was affected by his Davis County work.

d. The medical care which the applicant received since 1 June 1993 was not necessitated by exposure to chemicals while working for Davis County during the relevant periods.

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e. There is no future medical care which can reasonably be expected to be necessitated by the applicant's exposure.

f. The applicant does not appear to have any permanent impairment except for the anosmia and the seizure disorder, both of which are considered nonindustrial.

29. The judge adopts the findings of the medical panel as his own.

DISCUSSION:

Counsel for the applicant has done a commendable job in providing a thorough analysis as to why this case should be decided in favor of the applicant. However, medical causation is lacking, and the weight of the medical opinion is contrary to a finding of medical causation.

The medical panel as well as Dr. Matsuo concluded that it was unlikely that the exposure to the Clorox solution was sufficient to cause any impact on the applicant's cerebral function. There were none of the normal prodromes of significant respiratory distress which ordinarily accompany even slight exposure to any Clorox type spray. Additionally, there was a significant delay in the occurrence of a seizure after the last exposure. During this delay, the applicant was apparently able to function well which suggested to the medical panel that there was no acute involvement.

In the absence of major noticeable respiratory distress, it is not reasonable for there to be any continuing effects of the Clorox type exposure on a cumulative basis. Also, there is no indication that exposure to other agents including the detergent and the Parvosol could have produced a convulsive seizure.

There are other clues unrelated to the applicant's work at Davis County which predated his employment with Davis County and are likely the causative factors. These are noted by the medical panel to be:

a. The likelihood of an injury which ruptured the olfactory fibers as they came down through the lamina cribrosa beneath the frontal lobes of the brain. The evidence shows that the applicant's anosmia predated his work at Davis County.

b. There is history of an abnormal ventricle consistent with an injury back in 1988. A localized EEG abnormality is recorded which is not likely the result of a diffuse general toxic agent.

c. The applicant had a concussion in a boxing match

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while in college sufficient to require emergency room care, and sufficient to require him to miss a period of school.

d. He hit his head on the door frame of his vehicle. This was severe enough to cause him to obtain a CT scan at the time.

e. His low blood sugar noted during one of his seizures would not have occurred from exposure to the chemicals.

f. There is long standing evidence of asymmetry of the lateral ventricles of the brain.

g. The suggestion that his anosmia might have allowed him to have a greater exposure is negated by his intolerance to even minimal exposures to gasoline, paint, or to the Clorox.

The applicant was exposed to small household and laundry type concentrations of Clorox. There was no evidence that any other members of the Davis County animal control section ever became ill as a result of the exposures.

Under such circumstances, it has not been shown to a preponderance that the seizures were medically caused by the work at Davis County, and this case must therefore be dismissed.

CONCLUSIONS OF LAW:

There is insufficient evidence to show that Ivan D. Thompson's grand mal seizures which occurred on June 1, 1993 and July 8, 1993 arose out of and in the course of exposure to Clorox and other chemicals related to his employment for Davis County.

ORDER:

IT IS HEREBY ORDERED THAT the claims of Ivan D. Thompson for worker's compensation benefits based upon exposure to Clorox and other chemicals used while employed by Davis County, allegedly resulting in grand mal seizures on June 1, 1993 and July 8, 1993, are hereby dismissed with prejudice.

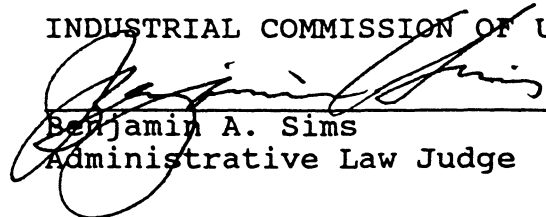
IT IS FURTHER ORDERED that any Motion for Review of the foregoing shall be filed in writing within thirty (30) days of the date hereof, specifying in detail the particular errors and objections, and, unless so filed, this Order shall be final and not subject to review or appeal. In the event a Motion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

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with the Commission in accordance with U.C.A. Section 63-46b-12(2).

DATED THIS 5 day of July 1994.

INDUSTRIAL COMMISSION OF UTAH



Benjamin A. Sims
Administrative Law Judge

CERTIFICATE OF MAILING

I hereby certify that on the 5 day of July 1994, the attached ORDER in the case of Ivan D. Thompson was mailed, postage prepaid to the following persons at the following addresses:


Ivan Thompson
595 N 800 W
W Bountiful UT 84087

David J. Holdsworth, Atty
185 S State #500
Salt Lake City UT 84111

Mark Dean, Atty
The Workers Compensation Fund of Utah (Drop Box)

Erie V. Boorman, Atty
The Employers' Reinsurance Fund

INDUSTRIAL COMMISSION OF UTAH


June S. Harrison, Paralegal
Adjudication Division

/jsh

ORD\THOMPSON

MEDICAL PANEL REPORT

MADISON H. THOMAS, M.D.
8TH AVENUE & C STREET
SALT LAKE CITY, UTAH 84143

Benjamin A. Sims
Administrative Law Judge
Industrial Commission of Utah
160 E. 300 So./P.O. Box 146615
Salt Lake City, UT 84114-6615

Date of Panel: 17 May 1994

Re: Ivan D. Thompson
Inj: 6-1-93 & 7-8-93
Emp: Davis County

REPORT OF MEDICAL PANEL

A medical panel consisting of Drs. Douglas Rawlins (toxicologist) and Madison H. Thomas (neurologist), with the latter as chairman, met to evaluate the case of Ivan D. Thompson, with reference to an injuries reported to have occurred on 1 June 1993 and 8 July 1993.

The file made available to the panel was reviewed by the panel members, and the history was reviewed in detail with him and separately with his wife. He was examined by the panel members, and X-rays were reviewed. Additional information as to the components of various substances was received from the Davis County Animal Control Center and has been included in the panel's report. The Preliminary Findings of Fact was used as a general outline in reviewing his history.

The applicant indicates that presently, he feels he is getting along reasonably well. He is taking Dilantin 600 mg a day and is also taking Coumadin because of the blood clot and pulmonary embolus last November. He does not feel either of these cause him any difficulty. He has occasional headaches for which he takes Motrin. He has not returned to work, but has plans to go to massage therapy school in the near future. The applicant is apprehensive and will not go anywhere where Clorox may be, as he has the impression that this has caused the seizures. Likewise, he cannot stand to be near an automobile when it is being gassed up because of the smell of the gasoline. His wife has to take the car to gas it up from time to time when he is not there. She also has to do some of her housecleaning at home when he is away.

The applicant indicates he had been working doing essentially the same job for the Davis County Animal Control unit for about two and a half years. On 1 June 1993, he was engaged in his usual tasks. He recalls having breakfast and lunch which he recalls as being adequate. He had cleaned one or two kennels before going into the field.

He describes the sequence of cleaning a kennel as involving first spraying it with water and then cleaning it with a degreaser preparation. This is something that is sprayed on and then is rubbed with a brush with a two- or three-foot-long handle, so that his hands usually did not become contaminated with the degreaser. He indicates there may be some spillage, but usually the degreaser is handled with a long-handled brush. After this, the kennel was sprayed, and then he

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Re: Ivan D. Thompson

would spray the kennel with a Clorox solution and turn it so that the kennel could dry. He recalls putting enough Clorox onto the kennel that he could actually see the liquid rather than just covering it with a spray. Each kennel took about a half minute to spray adequately. After doing this, he would take some paper work into the office and then go and pick up the kennel and the dog lease. All of this work was done in a large room with two-car-garage-type doors which were normally open during the summer months, so that he believes the area was relatively well ventilated in this way.

He understands that he was observed to stop at a roadside shop after leaving the animal shelter. He next recalls seeing his wife and apparently complained to her that his tongue hurt. The applicant drove his own vehicle to the doctor, and his wife next saw him in the doctor's office but she did not follow immediately behind him. He was hospitalized, but was not placed on any anticonvulsant medication. He did not return to work until June 22, 1993.

On return to work, he resumed his regular duties. On 8 July 1993, he picked up a dog and took it to the shelter, after which he cleaned a kennel in the usual fashion and went home for lunch. When he did not return, the other workers called, but became concerned and called the paramedics who went to his house. The applicant recalls that he became aware of vomit on the floor and in other parts of the house. He was taken by ambulance to Lakeview Hospital where additional studies were done. His tongue had been bitten again. He was seen by Dr. Hallquist and was told that he couldn't return to his regular work and could not drive a car for six months, so he stopped driving. His tongue gradually improved. He reports being followed with a gradually increasing dose of Dilantin up to 600 mg per day.

Additional information was provided by De Ann Hess of the Department of Animal Care and Control for Davis County. She indicated that the preparation Parvosol was not a preparation they ordinarily used, but they were given a gallon by a salesman as a sample, so they did use it. This was diluted with water and was used to soak the leashes which had been used by the control officers. When they returned to the center, they would drop the leash into a sink, and then a shelter technician would process them further, and after being soaked for a time, would hang the leashes up to dry. The animal control officers would not have any direct involvement with the Parvosol, but would take a dry leash with them when they would go out on another call. The applicant indicates he had no indication of any skin reaction or other problems from the use of the leashes.

Details of the contents of the Parvosol are as shown in the attached copies which are attached to this report.

Ms. Hess indicates that the Excidor was something that was very expensive and was used only by maintenance personnel and was never used by the officers.

The degreaser that would have been used by the applicant at that time, according to Ms. Hess, was a product called Lemoset, whose characteristics are likewise enumerated in the attached listing.

This was used with a spray device and matches what the applicant describes as a degreaser used after the water and before the chlorine spray was used.

It is noted from the Preliminary Findings of Fact that a number of contributing factors have been evaluated. For example, mosquito spray had not been used in the area where the applicant was working. There were no poisonous chemicals on his trousers at the time of admission to the hospital. Other employers are not said to have had any adverse reaction to the chemicals at the facility.

The applicant's wife was interviewed separately. She recalls that in the June episode when she saw him at home, he seemed very tired and complained that his tongue hurt. She did not have any clue that there was a seizure involved and encouraged him to drive his own car to Dr. Peterson's office. She understood Dr. Peterson felt he may have been exposed to a pesticide in some area where he was working.

She indicated that on July 8th, he had left work to go home for lunch, but when he did not return, an ambulance was sent for him, and she did not see him until after he was hospitalized. She indicated that after being released from the hospital, he seemed relatively tired and quite concerned about getting back to work. She explained the situation of his job being terminated. She understood that Dr. Hallquist said he should not go back to an area where there was the Clorox smell in the area. His wife felt that the supervisors felt he was withholding information when they did not get reports from the doctors as soon as they expected them. She indicated that after the second seizure, he seemed to be bothered by gas fumes when the car was being filled with gas, and a couple of weeks afterwards, he reported feeling nauseated and light-headed. He also gets headache sometimes when exposed to strong perfume, and usually he just leaves the area and the headache goes away.

When asked about the situation of living with her parents, she indicated this was a temporary arrangement since they had sold their house and were in the process of building their new one. She feels it was a very fortuitous arrangement, as it made it easier for them than had it been otherwise. She indicates he has not been seriously depressed, although concerned about not being able to drive, since this has an impact on his ability to work at what he had been doing for a number of years.

The applicant indicates his current age is 31. He is 5 feet 6 inches tall and weighs 242 pounds, having been a maximum of 260. He is ambidextrous. He writes with his right hand and eats with his left hand, but can do many things with both hands. He recalls childhood chickenpox without complications. He has fractured both ankles at different times, with these being treated with casts without problems. He fractured the left ankle again three years ago and has no current problems. He developed a problem with ingrown toenails in 1989, but has had no subsequent problems from them. In 1990, he was hurt when a 20-pound box fell about 20 feet on him. He had a backache for a time, but has had no current back symptoms. He hasn't had any difficulty with hearing, swallowing, chewing, talking, etc. Blood pressure has always been normal. He has had no ulcer

or GI symptoms. He denies any respiratory difficulties, though occasionally he feels he gets stuffed up, but without any particular time of year or known reason. He has never had any respiratory symptoms at work. In July 1992, he had a dog bite on his left hand and was given a tetanus shot, but has had no problems with that.

In October 1993, he was operated on for fibrous dysplasia which required a craniotomy and operating in the area of the right eye, with apparently no penetration into the cerebral cavity and no impairment of the eye subsequently. In November 1993, he developed a thrombosis in the right leg and an embolus went to his lungs, which he recalls as causing a great deal of pain. He was subsequently put on Coumadin and continues on this to the present time. For many years, he has had a feeling of sensitivity to bananas and mustard, and may develop vomiting, diarrhea, cramps, or chest pains with exposure to these.

The applicant reviewed various neurologic events. As far as he knows, he was able to stand and walk at the usual ages. He believes he had difficulty smelling things as long as he can remember. When his brother was being checked by an ear, nose, and throat physician, his mother asked him to check the applicant as well. He understands that he just checked his ability to smell and did not further tests. He does not feel his condition has changed in recent years. He has had occasions when he feels light-headed when he is exposed to pain, gasoline, or chlorine smells, and in the past year has studiously avoided being around any kind of paint or gasoline smells.

The applicant indicates that in 1982 or 1983, while in college, he was boxing with some Golden Gloves boxers and was apparently struck hard enough that he was knocked down. He indicates the paramedics took him to the hospital, and he was told he had a concussion.

In 1988, he indicates he was holding something in his hand and bumped his head up against the frame of the driver's side door as he was getting into the vehicle. He developed headache and vomited and felt inclined to "lie around." He was taken to the hospital at the time and was again told that he had had a "slight concussion." It is noted that a CT scan done at that time showed some asymmetry of the left frontal ventricular horn.

He indicates that sometime after he started work at the Davis County Animal control Center, approximately three years ago, he was trying to control a "critter" weighing 300-400 pounds when it came straight at him and struck him on the chest. He was not knocked out, but was hospitalized for observation, apparently there being a concern about the possible cardiac effects from the blow, although there was no apparent concern about a cerebral effect at the time.

The applicant indicates that in addition to boxing, he has been extensively involved in karate, and when his attention was recalled to the medical notes, he indicates that a week before his first seizure in June 1993, he suffered a blow to his face, which he reported. He does not think he was knocked out and does not recall any bruising of the face at the time.

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Re: Ivan D. Thompson

The applicant indicates he was born in Wyoming and attended high school there. He qualified for a national honorary society for three years, with grades in the 3.7 to 3.9 range. He attended three years of physical therapy training before leaving on a mission to the Philippines. He qualified for an associate degree in sciences.

The highlights of the record include a report on 1 June 1993 by Dr. Peterson who noted a gap of 45 minutes which was not accounted for, apparently during which time he returned home staggering with his clothes wet and being slow of speech, etc., although apparently, according to his wife, he would have had to negotiated the freeway to get home. He reported nausea and having been wet from the chest down. He did not smell of urine. There was no indication of head injury, but the tongue showed bite marks and speech was thick and difficult and slow. The blood sugar was 53, and he was given sugar, and later it was 70. On 7 June, he reported feeling nausea and dizziness, but was able to ambulate. On 11 January, he was cleared for light duty. He returned to regular duty with the various investigations previously referred apparently being negative.

He was reviewed on 8 July 1993 by Roberta Hallquist. She recorded the history very much as it has been previously recorded. He was found to have garbled speech and a bitten tongue when his employer called him at home. He complained of headache and drowsiness and reported he had been watching television (although his wife indicates the television was not turned on). He had myalgia, as well as the sore tongue. He had had several bouts of watery diarrhea five days before, but this resolved. She recorded the injury when he was knocked to the ground by the young bull, striking his torso and buttocks, but without injuring his head. Neurologic examination was essentially negative, although the first cranial nerve was not checked.

She started him on Dilantin and indicated he should not drive a vehicle because of the two seizures.

Notes pertinent to his subsequent surgery for fibrous dysplasia have been reviewed and this does not appear to be related to the present condition.

On 29 December 1993, he was seen by Dr. Matsuo where the history was slightly different, in that he interpreted the loss of smell function as being gradual and that there was no history suggestive of any head injury. He reviewed the two episodes and interpreted these as being seizures. He subsequently expressed some uncertainty about the likelihood of both seizures being caused by the exposure to the Clorox spray.

It is noted that his first waking and sleeping EEG was normal in June, and the second one in July with sleep deprivation was abnormal.

Laboratory studies were negative.

The applicant's mother called the panel chairman by telephone. She indicates that he was the result of a normal, healthy pregnancy and normal delivery. He walked at about 11 months and began school at the age of 6. She does not recall the exact age, but when he was a small child, she took her other son to an ENT specialist about his ears, and she asked him to check our applicant's ears, and he found they were satisfactory. At that time, he checked him for ability to smell and found that he could not. She does not recall any unusual food habits or other differences about him with reference to smell throughout his growing years. He had his tonsils and adenoids removed, and had his wisdom teeth extracted before leaving on his mission. She indicated he did not have whooping cough, but did have mumps and chicken pox and croup on occasion when he was small. She indicates he did well with school, being among the best in the class of 13 in his high school. The family had a horse, but she does not recall any falls or being kicked. She indicates the boxing took place in college and was a fund-raising event when the local college students boxed a group of Golden Gloves competitors. She was not present at the time, but she indicated he had sufficient symptoms from his "concussion" that he missed so much school that he did not go back until the following quarter. She does not recall any seizure type of activity during his youth or childhood. He had no significant illnesses while on his mission in the Philippines.

She expressed great concern that he might have another convulsion if he was inadvertently anywhere near a Clorox solution.

EXAMINATION:

Examination reveals a young man of about stated age who appeared in a good general state of health. He sat throughout the history taking without difficulty and showed no impairment of walking, standing, or balance. He is very stocky in build and heavily muscled in all extremities. He was oriented for time and place, etc. He recalled the current president and other more recent presidents, but reversed Bush and Reagan. He had difficulty with serial sevens, but did serial fives promptly. He was relatively literal in handling proverbs, but denied any significant depression, undue anxiety, or apprehension, other than his concern about having another convulsion if he were exposed to Clorox or similar agents.

Blood pressure was 110/75. Pulse was regular, and the heart and lungs were not remarkable.

The head showed no obvious deformities. There was no tenderness. The applicant indicated he could not detect the presence of a mild olfactory stimulus, nor of an alcohol-soaked cotton pad under either nostril. The neck had a full range of motion in all directions and no tenderness.

The upper extremities showed a full range of motion and excellent strength bilaterally. Finger-to-nose testing was normal and there was no tremor.

The thoracic spine had a normal configuration, as did the lumbar spine. Range of motion was normal. He could bend over to touch the floor without difficulty, and there was no tenderness over the spine.

The lower extremity showed normal strength, with good walking on heels and toes. He could walk tandem with eyes open or closed and Romberg was negative.

Reflexes were symmetrical and within normal limits. Babinski was negative.

Sensory examination was normal throughout for tuning fork, position, sharp object, etc.

X-rays have been reviewed and show a greater-than-average asymmetry of the lateral ventricle.

The AMA Guide to Evaluation of Permanent Impairment Fourth Edition, as modified, was used as a reference.

Assuming but not deciding that the applicant was involved in circumstances as outlined, the panel concludes in terms of reasonable medical probability as follows:

- 1) There is not a medically demonstrable causal connection between the applicant's 1 June 1993 and 8 July 1993 grand mal seizures and his work as an animal control officer in Davis County during 1991 through 1993.

Comment: Our conclusion on this is based on an effort to balance various factors that may reasonably be considered as contributory to the occurrence of isolated grand mal seizures. On the one hand, we have the suggestion that one or more of the chemical substances he was exposed to triggered these seizures. It seems quite unlikely that the exposure to the Clorox solution reached sufficient levels to cause any impact on his cerebral function since there does not appear to have been any of the observed prodromes of significant respiratory distress which ordinarily accompanied even slight exposures to any Clorox type spray. There is secondly, a significant delay in the occurrence after the last exposure, during which he was apparently able to function well, suggesting there was no acute involvement. Likewise, it is not reasonable that without major noticeable respiratory distress, that there would be any continuing effects of the Clorox type exposure on an accumulative basis. The other two, the detergent and the Parvosol, are not of the nature which are likely to produce a convulsive seizure, especially where there was no indication of effect at the time of exposure. Possible exposure to other toxic agents has apparently been exhausted by those who have studied this, as well.

On the other hand, we have a history of a number of other factors which must be considered. The decreased smell function is most commonly an effect of an injury which ruptures the olfactory fibers coming down through the lamina cribrosa beneath the frontal lobes. Although we do not know of a specific injury, this can occur without loss of

consciousness or otherwise affect the person in other than loss of olfactory function, especially early in life. Secondly, there is a history of an abnormal ventricle consistent with an injury back in 1988. There is a localized EEG abnormality recorded, which is not likely the result of a diffuse general toxic agent.

There are additional historic events to consider, including the "concussion" in the boxing match when he was in college, sufficient to require emergency room care, and according to his mother, a period when he missed enough school to delay his education. Secondly is the event when he hit his head on the door frame of the vehicle, which was considered sufficient to secure a CT scan at the time. Lastly, there is the slightly low blood sugar noted on arrival at the doctor's office, but this in itself would not have occurred from exposure to the chemicals under consideration. There is a long-standing evidence of asymmetry of the lateral ventricles.

This, it appears to the panel in terms of reasonable medical probability these other multiple evidences of impact on the brain were more likely the causative factor than what would have to be an extremely atypical manner of chemical effect on the brain.

The suggestion that his reported anosmia might have allowed him to have a greater exposure seems to be negated by his intolerance of even minimal exposures to gasoline fumes, paint fumes, or the Clorox subsequently, with physical symptoms actually being suggested in relation to those exposures of a non-industrial sort as well.

- 2) The applicant's seizure problem consists of two highly probable grand mal seizures.

Comment: This conclusion is circumstantial, but the description of his status and the clearly bitten tongue makes the diagnosis quite probable. As for causation, see the comment above.

- 3) We have not identified any seizure problems related to his work for Davis County during 1991 through 1993. Further, we do not believe he had a nonwork-related disability which was affected by his Davis County work.

- 4) The medical care the applicant received since 1 June 1993 was not necessitated by exposure to chemicals while working for Davis County during the relevant periods as indicated in the following comment:

Comment: In the sense that there was from the first a strong supposition that his work activities had caused the seizures, initially by his family doctor and seconded by the consultant, it is reasonable to assume that that medical care was necessitated by what was assumed to be an exposure to the chemicals. Although laboratory tests did not confirm the presence of any organic chemicals and/or on further review as we have evaluated the case, it did not appear that the chemical exposure was the causative factor of the seizures, it is

still reasonable to conclude that the medical care was justified because of the circumstances in which the seizures occurred and the various evaluations were done to reach a further definition of the nature of the problem, whether subsequently agreed to by other physicians or not. As an example, in a case of a suspected broken limb, an X-ray being taken being negative for fracture does not mean that it was not a reasonable medical expense to determine that.

- 5) Future medical care reasonably expected to be necessitated by his exposure is none.

Comment: See the general comment under question one.

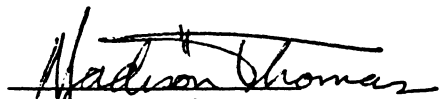
- 6) The applicant does not appear to have any permanent impairment, except for the anosmia and the seizure disorder, both of which are considered non-industrial.

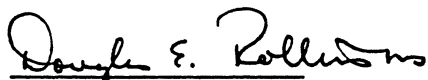
Judge Benjamin A. Sims
17 May 1994
page 10

Re: Ivan D. Thompson

Members of the panel will be happy to try and respond to any additional questions if it would be helpful.

Respectfully submitted,


Madison H. Thomas, M.D.
Panel Chairman


Douglas Rollins, M.D.
Panel Member

MHT:csW

Attachments: Toxicological summary note
 Ingredient lists for selected chemical agents



CENTER FOR HUMAN TOXICOLOGY

UNIVERSITY OF UTAH • 417 WAKARA WAY RM 290 • SALT LAKE CITY, UTAH 84108 • (801) 581-5117 FAX (801) 581-5034

5-28-94

Toxicology Summary Note and Ingredients List for Selected Chemical Agents.

Parvosol:	Quaternary ammonium compounds (detergents)
Lemoset:	Quaternary ammonium chloride compounds (detergents)
Clorox:	Sodium hypochlorite solution

In my opinion, there is no scientific evidence that a workplace exposure, as described by Mr. Thompson, to the above compounds would result in a seizure disorder. Such chemicals are used commonly and unless the exposure is excessive (greater than routine workplace exposure) or the person intentionally consumes the chemical there are no reports of seizure disorders. Further, if the clorox exposure were sufficient to produce systemic symptoms, it is likely that Mr. Thompson would have experienced respiratory difficulties as well as irritation to the mucous membranes of the mouth and upper airways.

Thus, I fully agree with the contents of this report.

Douglas E. Rollins, M.D., Ph.D.
Director, Center for Human Toxicology
Professor, Pharmacology and Toxicology
University of Utah

DIRECTIONS FOR USE

It is a violation of Federal Law to use this product in a manner inconsistent with its labeling.

GENERAL USE DIRECTIONS FOR DISINFECTING

For use on hard non-porous surfaces such as floors, walls, metal surfaces, stainless steel surfaces, porcelain, and plastic surfaces. Remove gross filth and heavy soil deposits, then thoroughly wet surfaces. Use 2 ounces or 1/4 cup per gallon of water for a minimum contact time of 10 minutes in a single application. Can be applied with a mop, sponge, or cloth as well as soaking. The recommended use solution is prepared fresh for each use then discarded. Rinsing is not necessary unless floors are to be waxed or polished.



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Parvosol™

BROAD SPECTRUM GERMICIDAL DETERGENT AND DEODORANT

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Active Ingredients

Didecyl dimethyl ammonium chloride	2.31%
n-Alkyl (C ₁₁ 50%, C ₁₂ 40%, C ₁₄ 10%) dimethyl benzyl ammonium chloride	1.54%
Inert Ingredients	96.15%

TOTAL 100%

KEEP OUT OF REACH OF CHILDREN

CAUTION

(See right panel for additional precautionary and practical treatment statements)

CONTENTS ONE GALLON (3.785 Liters) :

EPA Registration No. 47371-131-134 • EPA Est. No. 134-OH-01

INDEPENDENT MEDICAL EVALUATION



January 18, 1994

Peggy Patterson
Legal Adjuster
Workman's Compensation Fund of Utah
P.O. Box 57929
Salt Lake City, Utah 84157

RE: IVAN DEE THOMPSON
UUMC: 792598-5

Dear Ms. Patterson:

I have evaluated Mr. Ivan Dee Thompson and have reviewed the medical record. Reports of radiological studies were available, but I have not been able to review the original films. It is my understanding that radiological studies were unrevealing concerning the current problem. According to the record, the patient had an incidental finding, which has been surgically corrected.

Enclosed, please find a copy of my summary. It is my understanding that the question arose as to contribution of Clorox (sodium hypochlorite). It was felt that anosmia that the patient has had since childhood may have contributed to excessive exposure and his seizures may have been neurotoxic symptoms thereof.

I reviewed what was available concerning this agent and it is my understanding that the agent is irritant and overexposure would probably be obvious because of local mucosal irritation and possibly upper respiratory symptoms. It does not appear that Mr. Thompson has suffered either acute or chronic symptoms suggestive of such toxic exposure. Therefore, I am not sure if we have strong reasons to consider neurotoxicity of sodium hypochlorite as explanation for seizures. At this time, it would appear prudent to manage his seizure disorder as a condition of unknown etiology and I would agree with Dr. Halquist's action to place him on anti-epileptic drug prophylaxis. I am inclined to recommend a re-evaluation in one year and consider having him come off Phenytoin if he remains without recurrent symptoms.

I hope I have addressed the questions that have been raised, but would be happy to write a response to additional questions if there should be any.

Sincerely Yours,


Fumisuke Matsuo, M.D.

cc: Roberta Halquist, M.D. Department of Neurology

FM/680.typ

School of Medicine
Medical Center
50 North Medical Drive
Salt Lake City, Utah 84132
(801) 581-6071



CLINIC NOTE

December 29, 1993

RE: IVAN THOMPSON
UUMC: 792598-5

The patient is a 31-year-old and was accompanied by his wife. The patient works for the Davis County as an animal control officer and suffered from episodes that were clinically presumed to be generalized convulsive seizures. They occurred on June 1 and July 8, 1993. He has been evaluated initially by Dennis Peterson, M.D. and subsequently Roberta Hallquist, M.D. The diagnosis of seizure disorder has been made and he has been treated with Dilantin. Its current dose is 600 mg a day for the past three months. Dr. Hallquist felt that his seizures were attributable to Clorox. Clorox is a cleaning agent that the patient has been exposed to relatively regularly at work. He is not the only staff who has had exposure to Clorox, but Dr. Hallquist felt that his exposure may well have been very significant because he has suffered anosmia since childhood, and his ability to protect him from intoxication is significantly impaired. He has worked in this capacity for the past two years without difficulty up to this time. Apparently, the onset of anosmia was gradual. Previously, investigations failed to reveal anything significant. There is no history suggestive of significant head injury. MRI of the head was reported as normal.

On June 1, 1993, he was cleaning his truck in the mid-afternoon. It had been a usual day and he does not recall anything unusual about the day prior or the sleep the night before. He is amnesic, and there was no witness, but he showed up at home, driving his truck. His clothes were wet below the chest. His wife estimated that the period of amnesia was probably approximately 45 minutes of duration. Because of concern, his wife insisted that he would see Dr. Peterson. He collapsed at the clinic, but general physical findings were normal, including EKG. He was hospitalized subsequently for two days. EEG and MRI were normal. He was released home for further observation on medical leave. He recalls having a hard time walking, and was not able to eat well. He took two weeks off, then went to alternating 24 hours on and off to the answering service. When he finally returned to his regular duty, a similar incident occurred. He was cleaning the truck and subsequently went home for lunch. Probably, he ate lunch and apparently threw up. His supervisor called the paramedics because she was not able to get hold of him. He was hospitalized again and was seen by Dr. Hallquist. Dilantin was started then.

(Continued)

RE: IVAN THOMPSON
UUMC: 792598-5

He has been married for seven years, and has one two and one-half year old child. His health has been good otherwise. He snores when he is congested, but his sleep has been normal and he reports no parasomniac symptoms. He recalls a boxing accident in 1981. It may have resulted in concussion. He suffered dizziness and disorientation. He underwent CAT scan with normal result.

During recent neurological investigations, abnormality of the bone assumed to be dysplasia of the roof of the orbit was diagnosed and he underwent a resection surgery on October 19. Indication for the surgery was the potential for compression of the optic nerve and ocular globe. His neurological findings were essentially normal, except for clinical anosmia bilaterally. There is no abnormality of visual function or auditory functions. EEG was normal at this visit. The patient was requested to bring in MRI of the head for detailed review.


Fumisuke Matsuo, M.D.

FM/657.typ