

**STATE OF LOUISIANA  
COURT OF APPEAL  
FIRST CIRCUIT**

**NO. 2008 CA 2153**

**JOE A. WILLIAMS**

**VERSUS**

**TEMPLE INLAND, INC.**

*Judgment Rendered:* DEC 23 2009

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**Appealed from the  
Office of Workers' Compensation, District 6  
Parish of St. Tammany  
State of Louisiana  
Case No. 06-02462**

**The Honorable Elizabeth A. Warren, Judge Presiding**

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**Delbert G. Talley  
Covington, Louisiana**

**Counsel for Plaintiff/Appellant  
Joe A. Williams**

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Covington, Louisiana**

**Counsel for Defendant/Appellee  
Temple Inland, Inc.**

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**BEFORE: DOWNING, GAIDRY, AND McCLENDON, JJ.**

**GAIDRY, J.**

An employee appeals the judgment of the Office of Workers' Compensation, dismissing his claim for workers' compensation for an occupational disease. For the following reasons, we affirm.

**FACTUAL AND PROCEDURAL BACKGROUND**

The claimant, Joe A. Williams, was a longtime employee at the Bogalusa paper mill operated by Temple Inland, Inc., his employer, and its predecessors.<sup>1</sup> Mr. Williams first began working at the paper mill in October 1969, and worked there in various positions until March 2005. He officially retired in October 2005.

On April 19, 2006, Mr. Williams filed a Disputed Claim for Compensation, claiming that he has sustained "respiratory problems" from chemical exposure and that those problems had constantly gotten worse over time until he was eventually hospitalized in March 2005. Mr. Williams's pulmonary condition has over the years been consistently diagnosed as asthma, with possible elements of chronic obstructive pulmonary disease and reactive airways disease syndrome, or RADS.

This matter was tried before the workers' compensation judge (WCJ) on March 19, 2008. At the conclusion of the trial, the WCJ took the matter under advisement for decision. Following submission of detailed post-trial memoranda, the WCJ issued written reasons for judgment and signed a judgment on June 25, 2008, dismissing Mr. Williams's claim. A copy of the WCJ's Written Reasons, detailing the evidence and testimony presented at trial, is attached to this opinion as an addendum.

Mr. Williams now appeals.

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<sup>1</sup> Two of the prior operators of the paper mill were Crown-Zellerbach Corporation and Gaylord Container Corporation.

## ASSIGNMENTS OF ERROR

Mr. Williams has listed eight separate assignments of error, but all essentially relate to the WCJ's factual findings and the weight of the evidence upon which she based her decision that he failed to meet his burden of proof that he contracted an occupational disease that arose out of and in the course and scope of his employment. Thus, the central issue presented for our determination is whether the WCJ was clearly wrong in concluding that Mr. Williams failed to meet that burden of proof by a preponderance of the evidence.

## ANALYSIS

In a workers' compensation case, as in other civil cases, the appellate court's review of factual findings is governed by the manifest error or clearly wrong standard. *Pertuis v. Architectural Fabrications, Inc.*, 01-2684, p. 6 (La. App. 1st Cir. 12/20/02), 836 So.2d 450, 453, *writ denied*, 03-0231 (La. 4/4/03), 840 So.2d 1216. The two-part test for the appellate review of a factual finding is: (1) whether there is a reasonable factual basis in the record for the finding of the trial court, and (2) whether the record further establishes that the finding is not manifestly erroneous. *Mart v. Hill*, 505 So.2d 1120, 1127 (La. 1987). Thus, if there is no reasonable factual basis in the record for the WCJ's finding, no additional inquiry is necessary. However, if a reasonable factual basis exists, an appellate court may set aside a WCJ's factual finding only if, after reviewing the record in its entirety, it determines the WCJ's finding was clearly wrong. *Dressel v. Topeka Transfer & Storage*, 02-0779, pp. 4-5 (La. App. 1st Cir. 3/28/03), 844 So.2d 288, 291. If the findings are reasonable in light of the record reviewed in its entirety, this court may not reverse even though convinced that had it been sitting as the trier of fact, it would have weighed the

evidence differently. *Rosell v. ESCO*, 549 So.2d 840, 844 (La. 1989). Thus, where there are two permissible views of the evidence, the factfinder's choice between them cannot be manifestly erroneous or clearly wrong. *Stobart v. State ex rel. Dep't of Transp. & Dev.*, 617 So.2d 880, 883 (La. 1993).

The trial court's finding regarding causation is a factual finding and must be reviewed under the manifest error standard. *Robling v. Allstate Ins. Co.*, 97-0582, p. 4 (La. App. 1st Cir. 4/8/98), 711 So.2d 780, 783. Mr. Williams correctly emphasizes that Louisiana courts should interpret workers' compensation laws liberally in order to afford coverage. *See Coats v. Am. Tel. & Tel. Co.*, 95-2670, p. 4 (La. 10/25/96), 681 So.2d 1243, 1245. However, despite such liberal construction, the claimant's burden of proof as to causation is not relaxed and must be shown by a preponderance of the evidence. *Id.*

Every employee who is disabled because of the contraction of an occupational disease is entitled to receive workers' compensation benefits. La. R.S. 23:1031.1(A); *Seal v. Gaylord Container Corp.*, 97-0688, p. 5 (La. 12/02/97), 704 So.2d 1161, 1164. An occupational disease is defined as "only that disease or illness which is due to causes and conditions characteristic of and peculiar to the particular trade, occupation, process, or employment in which the employee is exposed to such disease." La. R.S. 23:1031.1(B). The causal link between the employee's illness and work-related duties must be established by a reasonable probability. *Seal*, 97-0688 at p. 6, 704 So.2d at 1165.

Mr. Williams's physicians' opinions on the relationship of his complaints to his employment were based largely on the history provided by Mr. Williams. In her detailed written reasons for judgment, the WCJ took

notice of the admissions of several of Mr. Williams' treating physicians that they were unaware of the significant fact that he resided on a tree farm for many years, as well as information relating to his history and treatment by other physicians. She further expressly noted a number of inconsistencies in Mr. Williams's testimony and the evidence relating to his medical history, onset of symptoms, and treatment. Of particular significance were the prior history and description of symptoms, provided by Mr. Williams to Dr. Merlin Wilson and Dr. Lee Roy Joyner (two of his treating physicians), that his symptoms did not improve when he was away from the environment of the mill. The medical evidence and testimony uniformly suggest that such a circumstance would be inconsistent with occupational asthma, as such improvement by history is the most important diagnostic criterion for occupational asthma.

The rule that questions of credibility are for the trier of fact applies also to the evaluation of expert testimony. *Lirette v. State Farm Ins. Co.*, 563 So.2d 850, 853 (La. 1990). A trial court may accept or reject in whole or in part the opinion expressed by an expert. The effect and weight to be given expert testimony is within the broad discretion of the trial judge. *Rao v. Rao*, 05-0059, p. 14 (La. App. 1st Cir. 11/4/05), 927 So.2d 356, 365, *writ denied*, 05-2453 (La. 3/24/06), 925 So.2d 1232. It is the function of the WCJ to assess the weight to be accorded both the lay and the medical testimony, and the court may accept or reject the opinion of a medical expert depending upon what impression the qualifications, credibility, and testimony of that expert make on the court. *Ivy v. V's Holding Co.*, 02-1927, p. 7 (La. App. 1st Cir. 7/2/03), 859 So.2d 22, 28.

Medical testimony, albeit significant, is not conclusive as to the issue of causation, which is generally the ultimate fact to be decided by the court

after weighing all the evidence. *Peveto v. WHC Contractors*, 93-1402 (La. 1/14/94), 630 So.2d 689, 691. Medical testimony must be weighed in the light of other credible evidence of a non-medical character, such as a sequence of symptoms or events in order to judicially determine probability. *Schouest v. J. Ray McDermott & Co., Inc.*, 411 So.2d 1042, 1044-45 (La. 1982). The credibility of the plaintiff is especially significant when a physician must relate a medical condition to an accident when it is the plaintiff who provides a physician with a history of his symptoms. *Mart v. Hill*, 496 So.2d 1149, 1152 (La. App. 4th Cir. 1986), *reversed on other grounds*, 505 So.2d 1120 (La. 1987). Similarly, a claimant's lack of credibility on factual issues can serve to diminish the veracity of his complaints to a physician. *Bass v. Allstate Ins. Co.*, 32,652, p. 13 (La. App. 2nd Cir. 1/26/00), 750 So.2d 460, 467. Thus, in many cases the credibility of the history given by the claimant to his physicians becomes as important as the medical opinions based in part on that history. *See Cheatum v. Wackenhut Corp.* 346 So.2d 888, 890 (La. App. 4th Cir. 1977).

Both parties have fully and cogently set forth the opposing evidence before the WCJ and those factors favoring their positions. The trial evidence, taken *in toto*, admits of two opposing views on the issue of causation. As the WCJ's finding on the issue of causation was based upon her determination of witness credibility, it is entitled to great deference. *See Rosell*, 549 So.2d at 844. Although we may have reached a different result if we were determining this issue as trier of fact, we cannot find that the WCJ's determination regarding this issue was manifestly erroneous.<sup>2</sup> *See Stobart*, 617 So.2d at 882. Accordingly, we must affirm the judgment of the WCJ.

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<sup>2</sup> Because we affirm the judgment on the merits, it is unnecessary for us to address the issue of prescription raised by the defendant employer.

## **DECREE**

The judgment of the Office of Workers' Compensation, dismissing the claim of the claimant, Joe A. Williams, is affirmed. All costs of this appeal are assessed to the claimant.

**AFFIRMED.**

ADDENDUM

JOE A. WILLIAMS

DOCKET 06-02462

DISTRICT 6

VS.

OFFICE OF WORKERS' COMPENSATION

TEMPLE INLAND CORP.

STATE OF LOUISIANA

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WRITTEN REASONS

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Joe A. Williams filed a disputed claim for compensation against Temple Inland Corp. ("the mill") on April 19, 2006. Mr. Williams alleged an injury to his lungs in March 2005. Specifically, he alleged "respiratory problems constantly got worse until hospitalization in March, 2005, due to chemical exposure."

Mr. Williams testified that he began working at the mill in January 1970. He testified that he worked around chemicals and in dusty areas. He testified that over the years, he was exposed to chlorine, sawdust, sulfur dioxide, moldy bark, hot oils, creosote, sulfuric acid, burned plastic, burned marijuana, black liquor, green liquor, white liquor, and ash.

Mr. Williams testified that his asthma started in 1998. He saw Dr. Bernard Brach in 1998 and 1999, with complaints of shortness of breath. Dr. Brach started him on inhalers and placed him on steroids. He testified that he stopped seeing Dr. Brach because his insurance changed.

Mr. Williams testified that he saw Dr. Steele Rolston, an allergist, but he eventually stopped seeing Dr. Rolston. He testified that he saw Dr. Craig Parker, who "shot him up with steroids."



Mr. Williams testified that as a supervisor at the mill, he had posted safety materials in the past, but claimed he never saw a notice about filing a claim within a year of contracting an occupational disease.

On cross-examination, Mr. Williams testified that he started smoking in high school and quit in 1983 or 1984, after about 16 years of smoking. He testified that he smoked a couple of packs a day. He testified that he has worked on a tree farm his entire life. He testified that he now has mostly pine trees. He testified that the mold count from the pine trees has never been tested.

Still on cross-examination, Mr. Williams was asked about the thirty work injuries he reported previously when the mill was owned by Crown Zellerbach. He did not dispute the claims, but testified that he did not remember them all. He testified that he worked in the control room in a controlled environment from 2000 to 2005.

Mr. Williams confirmed that when he saw Dr. Merlin Wilson, he told Dr. Wilson that he had sprayed Jaytox under his house and gas had built up. He also confirmed that he told Dr. Wilson that he used insecticides on his farm. Mr. Williams testified that he saw Dr. Lee Roy Joyner on his own for a second opinion, and that he told Dr. Joyner about his exposure to Jaytox.

Mr. Williams testified on cross-examination that he did not remember going to the mill to meet with Ms. Galloway about his disability pension. He testified that he did not tell Ms. Galloway about any problems he had when he was at the mill in August 2005.

Rhonda Galloway testified on behalf of the mill. She is the benefits coordinator for the mill. She testified that she met with Mr. Williams in March 2005 to discuss short term disability. She met with him again in August 2005 to discuss disability retirement. She testified that Mr. Williams has been on disability retirement since October 2005.

Ms. Galloway testified that an employee must be out of work for six months before applying for disability retirement, and that the company pays 100% of the short term disability premium. She testified that an employee cannot receive short term disability if the injury or illness is work-related. She testified that occupational injury or illness claims are referred to occupational health, i.e. to Cindy Lee or Bill Bragg. She testified that through October 2005, Mr. Williams never mentioned that his condition was work-related.

Ms. Galloway confirmed Mr. Williams' testimony that he never mentioned any distress when he came to see her at the mill.

William Bragg testified on behalf of the mill. He is the safety manager at the mill. Mr. Bragg testified that the company's workers' compensation reporting policy is posted in two locations at the mill: at Cindy Lee's nursing station and at the time station where employees punch their time cards. Mr. Bragg testified that as of March 2005, Mr. Williams had not mentioned his condition was work-related. He testified that Mr. Williams eventually reported it as a workers' compensation claim in 2006 through Cindy Lee.

Mr. Bragg testified that he instituted air sampling around Mr. Williams' work area in 2006 after Mr. Williams' claim. He testified that an industrial hygienist did an investigation in the control room and other areas. He testified that no contaminants were found in excess, and everything was "OK" with OSHA.

Mr. Bragg testified that there were no chlorine based operations at the mill since 1975, and that there was no sulfur dioxide at the mill. He testified that the ash at the mill is wet when it is hauled, and that Mr. Williams would not have been around ash while working in the control room.

Numerous medical experts testified by deposition. Dr. Bernard Brach testified that he is board certified in pulmonology. He testified that he first saw Mr. Williams in 1998. He testified that he saw Mr. Williams on February 29, 2000 with complaints of shortness of breath. He testified that he had not diagnosed Mr. Williams with asthma at that point because testing was still ongoing.

Dr. Brach testified that his next clinic note was dated March 28, 2000. He testified about his notes from that visit:

"...Again, we're eliminating diagnoses here as we go. And, then, there's a simple note at the top. It has, "Multiple exposures at work" and, then, that he sprayed under his house for some kind of fungus. I noted, "Sprayed, and he didn't use a mask." And then I noted that as part of his lifestyle he tended to burn underbrush in his area. I guess that was on his - he lived on a farm, on his farm..."

Dr. Brach testified that he saw Mr. Williams on May 26, 2000 and for the first time he noted "occupational exposures is (sic) at issue." Dr. Brach testified that although Mr. Williams' next visit was scheduled for the fall, Mr. Williams did not

return to see him until over a year later on July 2, 2001. Dr. Brach testified that on that date, Mr. Williams' pulmonary function test showed that his lung power was 43 percent of normal. Dr. Brach testified that on that visit, he was still concerned about Mr. Williams' working and living environment. He testified that he referred Mr. Williams to Dr. Merlin Wilson, an allergist, because Dr. Brach thought his condition was probably work-related and that he wanted to make sure he was not missing something like an allergy.

Dr. Brach testified that after his referral to Dr. Wilson, Dr. Wilson suggested a possible toxic inhalation rather than allergic. He testified that he called and spoke with Dr. Wilson because he wanted to make sure of what he was saying. He testified that Dr. Wilson noted in his report that there was an exposure not only at home, but also at work of various chemicals, and that some of this exposure was chlorine-based products.

Dr. Brach testified that he saw Mr. Williams again in June of 2002. He testified that he noted in his chart "Still working in questionable environment", and that he was seen by Dr. Wilson. He also noted in the chart "Still going in the woods." He testified that at that point, he diagnosed Mr. Williams with Reactive Airway Disease ("RAD") and purulent bronchitis.

Dr. Brach was asked about any recommendations he made to Mr. Williams regarding any restrictions in his ability to work, and Dr. Brach testified that he remembered ongoing discussions with Mr. Williams about whether he should be

doing what he was doing, and he thought Mr. Williams' response was that he needed his job.

Dr. Brach testified that he saw Mr. Williams on November 19, 2002. Dr. Brach testified that he was writing in his chart notes "environment, environment, environment. I'm saying to him, look, it's the environment you're in." Dr. Brach was then asked about options that he provided to Mr. Williams, and he responded: "Well, I mean at this point you say, look, can you change things in your life? You know, and we'll go back to the three things that, you know, were noted several visits before, at work, you know, quit burning brushout in the field, quit spraying things like that..."

Dr. Brach testified that Mr. Williams cancelled his February 2003 appointment and returned on April 9, 2003. He testified that he had sent Mr. Williams to East Jefferson General Hospital for some lab work on March 5, 2003, and it was all coming back negative. He testified that he gave Mr. Williams a peak flow meter to monitor his airway response to his environment at home and at work. He testified that Mr. Williams returned on May 9, 2003, but did not bring any peak flow measurements.

Dr. Brach testified that he saw Mr. Williams on November 13, 2003. He testified that in his chart he noted that Mr. Williams went to Germany and did well all summer.

Dr. Brach testified that he last saw Mr. Williams in June 2004. He testified that at that time, he put Mr. Williams on Xolair and Spiriva, and wrote "Needs to return in September with a spirometry."

Dr. Brach was asked if in his opinion, he could say more probably than not that Mr. Williams' RAD was related to something in his work environment at the mill, and he responded "I think it is."

Dr. Merlin Wilson is board certified in internal medicine, allergy and immunology, and rheumatology. He testified that he saw Mr. Williams on July 26, 2001 on a referral from Dr. Brach. He testified that Mr. Williams reported spraying Jaytox, a chlorine-based product, on mold under his house and he became short of breath within a few days. Dr. Wilson testified that Mr. Williams also reported exposure to burning bark at the Gaylord plant in Bogalusa. Dr. Wilson stated: "...He - when you're thinking about occupational asthma, you usually ask the question: Do you get worse at work? He does not get worse when he is at work."

Dr. Wilson testified that Mr. Williams was a farmer and he used various chemicals on his farm, such as insecticides. Dr. Wilson testified that he saw Mr. Williams for the specific purpose of determining whether he had hypersensitivity pneumonitis. He testified that he did skin testing on Mr. Williams for fungal precipitins, and the skin tests were negative.

Dr. Brice Steele Rolston is board certified in internal medicine and allergy, asthma, and immunology. Dr. Rolston testified that he saw Mr. Williams only one time on July 22, 2004 on a referral from Dr. Brach. Dr. Rolston testified that a skin

test was done which indicated Mr. Williams was minimally allergic to mold. Dr. Rolston testified that Mr. Williams had been approved for treatment with Xolair, and he received injections on four occasions and never returned.

Dr. Rolston testified that occupational asthma or allergic alveolitis is typically caused by repetitive exposure to proteins, usually in the form of mold. Dr. Rolston testified that he diagnosed Mr. Williams with perennial allergic rhinitis, gustatory rhinitis, and asthma. He prescribed Spiriva to see if it would control Mr. Williams' gustatory rhinitis.

Dr. Rolston testified that he knew Mr. Williams had a farm, but did not know it was a tree farm. He testified that trees generally pollinate three weeks out of the year, so pollen is not the issue, rather it is the mold that grows on trees constantly.

Dr. Rolston testified that Mr. Williams was skin tested for a standard screening battery of molds, and he tested positive for aspergillus, alternaria, hormodendrum, penicillium, and fusarium.

Dr. W. Brooks Emory is board certified in internal medicine, pulmonary medicine, and critical care medicine. Dr. Emory testified that he saw Mr. Williams on June 8, 2006. Dr. Emory testified that he was comfortable with the working diagnosis of asthma, but he could not come up with a causative agent for his asthma. He testified that he could not find anything in the workplace as being the source.

Dr. Emory testified that he reviewed outside air samples from the mill, and the only thing found in the sample was the normal component of air, which is 21.9

percent oxygen. Dr. Emory testified that he did not think Mr. Williams had RAD, since he had no history of a single exposure which required hospitalization.

Dr. Emory was asked about Mr. Williams' exposure to Jaytox some four years prior to seeing Dr. Wilson, and whether that could have caused his asthma. Dr. Emory testified that he did not think so, that if it were chlorine-based, it would result in maybe an acute airway inflammation called chemical bronchitis.

Dr. Emory testified that in evaluating occupational asthma, one of the things doctors do is to see how the patient does out of the environment, then send them back in the environment and make peak flow measurements or spirometry measurements over time to see if the patient has an exacerbation. Dr. Emory testified that he did not think any of Mr. Williams' doctors had sent him back to the environment with measurement devices to see whether he had a fall in his flow rate.

Dr. Emory testified that based on his breathing capacity, he thought Mr. Williams could work, but not in an environment where he was exposed to fumes and dust and smoke.

Dr. Donald A. Kuebel is board certified in pulmonary medicine, internal medicine, and critical care medicine. Dr. Kuebel testified that he first saw Mr. Williams in March 2005 at Lakeview Regional Medical Center. He was brought in as a consult. Dr. Kuebel testified that in his experience treating Mr. Williams, he has definitely improved since he is away from the mill.

Dr. Kuebel testified that Mr. Williams' lung function in April 2005 was 70 percent. He testified that in August 2005, his lung function was down to 25 percent.



Dr. Kuebel was asked if Mr. Williams was still improving with therapy and being off work, and he stated that he has chronic asthma, his asthma flares, and it comes and goes.

Dr. Brach testified that he had not reviewed Dr. Brach's records. He testified that he knew Mr. Williams was under the care of another pulmonologist, but that he was unaware of the frequency in which he had bronchitis or any other lung condition.

Dr. Kuebel testified that if appropriate employment from a pulmonary standpoint could be found, there is a possibility Mr. Williams could work. Dr. Kuebel testified that he was unaware that Mr. Williams lived on a tree farm. Dr. Kuebel testified that he suspects that Mr. Williams will never come off Predisone.

Dr. Kuebel testified that Mr. Williams pulmonary function study numbers were better on April 21, 2005 than on February 13, 2007. When asked how he would reconcile those numbers, with it being worse two years later and despite being out of his work environment, Dr. Kuebel stated that Mr. Williams has irreversible airways disease, and he is going to have good days and bad days.

Under La. R.S. 23:1031.1(A), every employee who is disabled because of the contraction of an occupational disease shall be entitled to the compensation provided in the Act the same as if the employee received personal injury by accident arising out of and in the course and scope of his employment.

Expert testimony of an objective quality, focusing on probabilities, in addition to claimant's testimony, is required to support a finding of an occupational disease.

The causal link between the claimant's occupational disease and the work-related duties must be established by a reasonable probability. The claimant will fail if there is only a possibility that the employment caused the occupational disease or if other causes not related to the employment are just as likely to have caused it. *Dowell v. Ochsner Clinic of Baton Rouge*, 2003-0460 (La. App. 1 Cir. 3/10/04), 874 So.2d 852.

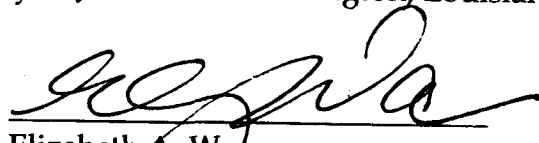
In the instant case, Mr. Williams' initial respiratory complaints occurred after the Jaytox episode when he was spraying the chlorine-based product on mold under his house. Also, Mr. Williams owns a tree farm, which could subject him to exposure to the mold which constantly grows on trees according to Dr. Rolston's testimony, and also to the chemicals in the form of insecticides which he reported to his doctors that he used on the farm.

Subjectively, Mr. Williams testified that his condition is improved since leaving the mill in March 2005. He called no witnesses to corroborate this. However, his testimony is contradicted by his current treating physician's testimony, as Dr. Kuebel testified that Mr. Williams' pulmonary function studies were *worse* in August 2005, some five months after leaving the mill, than his April 2005 studies.

Additionally, Dr. Brach recommended objective testing in the form of peak flow measurements to try to determine the cause of Mr. Williams' respiratory disease. He testified that he gave Mr. Williams a peak flow meter, but that Mr. Williams failed to bring him any peak flow measurements.

For all these reasons, the court concludes that Mr. Williams has failed to prove by a preponderance of the evidence, or by a "reasonable probability", that he contracted respiratory problems which arose out of and in the course and scope of his employment. Therefore, his claim for workers' compensation shall be dismissed with prejudice, each party to bear their own costs.

**DONE AND SIGNED** this 25<sup>th</sup> day of June 2008 in Covington, Louisiana.

  
Elizabeth A. Warren  
Southeastern Division Judge  
Office of Workers' Compensation