

**SUPREME COURT OF LOUISIANA**

96-C-0688

SILMON O. SEAL

versus

**GAYLORD CONTAINER CORPORATION**

KNOLL, J., concurring in part and dissenting in part.

I agree with the majority determination that the hearing officer correctly found that Seal had contracted an occupational disease and that he was entitled to an award of SEB's. However, I dissent from the majority's conclusion that the hearing officer was manifestly erroneous in awarding Seal penalties and attorneys fees. The findings of the hearing officer, which are entitled to great deference, are clearly supported by the record evidence and not manifestly erroneous. The majority opinion errs in substituting its own findings of fact for the equally reasonable findings of the hearing officer.

In my view, this hard working and faithful employee, who was fifty-seven (57) years of age when he was forced to stop working at the mill, clearly proved the defendant's arbitrary and capricious conduct. The medical evidence was clear and unequivocal: Seal's medical condition was caused solely by his employment as a bogol operator and would reoccur if he returned to work around noxious fumes. Despite the undisputed medical recommendation of Seal's treating physician, the *only* position shown to be available by the employer was at the plant where Seal would again be exposed to noxious fumes. The position offered by the defendant does not support its assertion of job availability. To the contrary, it illustrates the employer's

arbitrary disregard of Seal's medical condition and its capricious refusal to pay Seal's claim for SEB's.

This case demonstrates a classic case of arbitrary and capricious conduct on the part of the employer. We should discourage this type of conduct by reinstating the hearing officer's findings of arbitrary and capricious conduct and by reinstating the reasonable award of penalties and attorney's fees.