

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**WCC NO. H300809**

APRIL BENNETT, Employee	CLAIMANT
FAYETTEVILLE PUBLIC SCHOOLS, Employer	RESPONDENT
ARKANSAS SCHOOL BOARDS ASSN., Carrier	RESPONDENT

**OPINION FILED AUGUST 12, 2024**

Hearing before ADMINISTRATIVE LAW JUDGE ERIC PAUL WELLS in Springdale, Washington County, Arkansas.

Claimant represented by EVELYN E. BROOKS, Attorney at Law, Fayetteville, Arkansas.

Respondents represented by JAMES A. ARNOLD II, Attorney at Law, Fort Smith, Arkansas.

**STATEMENT OF THE CASE**

On April 22, 2024, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on March 4, 2024, and an Amended Pre-hearing Order was filed on March 12, 2024. A copy of the Amended Pre-hearing Order has been marked Commission's Exhibit No. 1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The relationship of employee-employer-carrier existed between the parties on February 28, 2021.
3. The respondents have controverted the claim in its entirety.
4. The claimant's weekly compensation rates will be determined at a later date.

At this prehearing conference the parties agreed to the addition of two experts to their witness lists. Dr. Keith Chambers, NMD, will testify for the claimant and Joe Henry with Atoka, Inc., will testify for the respondent.

By agreement of the parties the issues to litigate are limited to the following:

1. Whether Claimant sustained a compensable occupational illness to her body as a whole due to exposure to mold in the workplace on or about February 28, 2021.
2. Whether Claimant is entitled to medical treatment for her occupational illness due to exposure to mold in the workplace.

The claimant's contentions are as follows:

“Claimant sustained a compensable occupational injury/illness when exposed to mold while working. Claimant is entitled to medical treatment for the illness and symptoms caused by that exposure. Claimant reserves all other issues.”

The respondents' contentions are as follows:

“Respondents contend that the claimant's condition does NOT meet the definition of either a compensable injury or compensable occupational illness.”

The claimant in this matter is a 44-year-old female who alleges to have sustained a compensable occupational illness to her body as a whole due to mold exposure in her workplace on or about February 28, 2021. The claimant at that time was employed by the respondents as a junior high engineering teacher and track coach. The claimant's job duties included track practice in the morning before school and the last hour of the school day. She taught at Woodland Junior High in Room No. C6 and testified to spending five to six hours per school day in that particular room.

The claimant gave direct examination testimony about symptoms she began having in early 2021 as follows:

Q So what happened to you in early 2021 around the end of January, February? What happened?

A I started getting some odd symptoms: Sleeplessness, itchy, hives, headaches. They weren't always all at the same time, but it was odd to me. I am pretty in tune with my health and I really value it, so it was – they left just kind of alarming me a little bit and I was just trying to figure out what is happening, why am I having hives at night or leg tremors. There was quite a few symptoms that rotated. They weren't really ever at the same time most of the days.

Q Did you know what was wrong?

A No. Exhaustion, really exhausted. The exhaustion probably was what limited me from exploring them in depth at the beginning. I would just go to sleep instead. I would rest a lot. Lay down a lot.

Q When did you or did you at some point start seeking medical attention?

A That summer of 2021, I sought out medical attention and advice.

The claimant testified that she had some blood work and consultation of that blood work at the Institute of Natural Health in St. Louis, Missouri, in the Summer of 2021. The claimant was familiar with that facility as she used that facility when she was employed as a professional pole vaulter. The claimant testified that she waited for additional testing until the end of that same year due to her ongoing efforts to become pregnant.

The claimant testified on direct examination that she received those lab results in March of 2022. On pages 101-110 of Respondents' Exhibit 1 there appears a lab report regarding the

claimant from Genova Diagnostics/Metabolomix+. That report is dated March 28, 2022, and was ordered by the Institute of Natural Health in St. Louis, Missouri.

On direct examination the claimant was also asked about those test results and her actions because of the results as follows:

Q [BY MS. BROOKS]: Did you see the results of that test.

A I did, yes.

Q And what was it testing for?

A It was testing my mycotoxins in the urine.

Q So when you saw the results of these tests, did you understand what they were saying?

A Barely. Just through whatever the doctor had told me whatever it was showing me.

Q Okay. So when you got those tests and had the conversation with your doctor about whatever it was, what did you do then with those tests results?

A I called – well, I texted my principal. It was I think a Friday night or a Saturday. And then we ended up in a phone call.

Q And who was your principal?

A David McClure.

Q All right. And what did you text him? What did you say? Not exactly, if you don't remember, just what was the main gist of your conversation?

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THE WITNESS: When we spoke on the phone, I told him I had medical testing done and I think I am being exposed to mold and I believe it is in the classroom. What are my next steps is what I asked him.

Q [BY MS. BROOKS]: And what was the next step? What happened after that?

A When I got to school Monday, he told me I could move to a different room. I believe they said the custodians looked into the ceiling tiles.

I note that the timeline of the claimant appears to be inaccurate to some degree and that as early as March 8, 2022, the claimant had admitted an email into evidence with an exchange between her and Principle David McClure over her concerns with mold in her classroom. That email exchange is initiated by the claimant and found at Claimant's Exhibit 2, pages 1 and 2 and states:

Hi, there. I wanted to follow up with the brief conversation Mr. Glade had with me this morning about a mold check that happened from maintenance.

Being told that they looked above the ceiling tiles and cleared the ceiling of mold is concerning to me and tells me that this health issue is not being taken seriously. Now, last spring, insulation did fall out of my ceiling and it did have mold on it. I have a hard time believing there were no other pieces up there still lingering. That being said, my main concern is the air, and the HVAC that blows all day long, everyday.

I cannot return to my room until:

- \* A petri dish has been used in testing for mold
- \* An indoor air mold test has been done (and from what I understand an outdoor air test must also be done outside the room as a control sample)
- \* And the vents from the HVAC have been opened and swabbed and tested or a petri-dish done for mold in the actual vents and HVAC.

As stated before in my email yesterday I am very sick.

Recap of yesterday's email (a few edits were made for clarity):  
Last Thursday I received notice and a phone call from the clinic doctor that one of the first tests done, the MOLD testing, was complete and I was "off the chart" and in a highly dangerous range for 2 different types of toxic molds. (I can provide results if requested).

I reached out to you to be proactive in checking one of two main buildings that I spend most of my days inside in our district.

1. C-6 My classroom here at Woodland.
2. The BARC-Indoor football fieldhouse at the high school

In my classroom I do not feel good. It's a very sick feeling. Everyday. And over the last couple of years it has become progressively worse. And much of how I feel times up with the HVAC system turning on. I have been feeling exhausted, nauseated, sick, headaches, brain fog, muscle fatigue, itchy, sinus pressure, and other random symptoms and illnesses. I am willing to discuss more with anyone who might need to know more.

Please keep me up to date on further testing that will be performed.

Mr. David McClure responded by email minutes later as follows:

April,

I will talk with Steve Flickinger at Maintenance again and let him know the severity of the issue and see what needs to be done to get the more thorough testing we need.

On the morning of March 17, 2022, the claimant sent an email to Dr. Megan Duncan, a deputy superintendent for the respondent. That email is found as Claimant's Exhibit 2, pages 5 and 6. In the email the claimant expressed her concerns about getting testing for mold done as soon as possible in her old C6 classroom and the "BARC" at the Fayetteville High School (the facility where the claimant coached track). The claimant also discussed conditions she found in the C6 classroom when she re-entered it to get supplies for her new classroom. She believed those conditions made a case for testing quickly. The conditions she cited included a nonworking HVAC dial and small bucket of water and dish soap she had left that contained paint brushes and sponges. The claimant stated the water had a "terrible odor and visible mold fuzz."

Dr. Duncan responded via email later that morning as follows:

Ms. Bennett,

Thank you for letting us know. Please let Mr. McClure or Ms. Venters know if you need any materials out of room C6.

As noted, we are in the process of investigating the area to determine the next steps. Thank you for your patience as we are investigating.

On April 19, 2022, the claimant emailed Mr. Greg Mones, who is the Director of Human Resources for the respondent. That email is found at Claimant's Exhibit 2, pages 7 and 8.

Following is a portion of that email:

Hi everyone.

Thank you again for meeting with me on April 7<sup>th</sup>. I was wanting to follow up from that meeting and summarize what we discussed and our plan for action on those issues.

Being able to share with Dr. Duncan and Mr. Mones the health problems I have been having that have progressed over the past couple of years, the medical backing to support the discoveries and plan, as well as what our options are for exploring possible contamination in several district buildings that I have occupied, was productive.

Mr. Mones had agreed he need to reach out to Worker's comp as well as possibly through them, OSHA to understand what our protocol would be to professionally test C-6 as well as the BARC Athletic Facility as those are the places I occupy most, outside of my own home.

We had mold testing done in our home and was negative for mold which was a relief for us to know our home is safe. Built in 2014, Lead poisoning in our house is not a concern.

Mr. McClure at Woodland has allowed me to take over another common space for my classroom until professional testing can be done in my C-6 at Woodland and either, confirmed for toxic contaminants and/or toxic mold, or that is eliminated as the source of my slow poisoning from lead and toxic mold.

I am eager to hear back from Mr. Mones on what the next steps are through HR and Dr. Duncan's plan to test my classroom and HVAC, which I would like to be a part of the discussion with the

professional industrial hygienist or whoever is given the task to investigate those spaces. I feel my input might help shed light on how and when I felt the worse, and past incidents of leaks that might be source locations for contaminants.

Mr. Mones returned the claimant's email on Friday, April 22, 2022. In that email he informed the claimant that the respondent was in the process of selecting a company to do testing. Mr. Mones also discussed the accommodations being made so the claimant did not have to re-enter areas of the school facilities that she believed to be areas of concern. Mr. Mones also invited the claimant to submit any information that she would like the environmental testing company to know about the situation to him in writing and he would provide that information to them.

The respondents hired a company called NWA Mold Inspector to test the facility areas that were of concern to the claimant. On April 23, 2022, Mr. Brian Suggs went to those facilities and conducted testing. Mr. Suggs was called as a witness by the respondents. He testified that he is qualified to do environmental inspections and mold testing. He further testified that he holds 17 credentials in the field of mold testing. Mr. Suggs also identified his reports from that testing which were admitted into evidence at Respondents' Exhibit 3, pages 75-107. Following is a portion of Mr. Suggs direct examination testimony:

Q Was the testing that you did as reflected by the results that you just reviewed done in accordance with usual and customary industry standards?

A Yes.

Q You didn't take any shortcuts or deviate from any of the usual and customary procedures?

A No.



Q Were any limitations or restrictions placed on you by the Fayetteville School District?

A No.

Q You were just asked to do mold tests; is that correct?

A Correct.

On cross examination Mr. Suggs made it clear in his testimony the importance of outdoor testing in the area of indoor testing sites, along with an average outdoor testing number that is used as a safeguard against failed outdoor tests. Mr. Suggs also confirmed that he collects the samples and sends them to a laboratory, in this particular case Hayes Microbial Consulting, which does the laboratory work and returns the results to him.

On April 28, 2022, Mr. Mones sent an email to the claimant regarding the results of the testing that was done in the respondent's facilities at the claimant's request. The body of that email follows:

Ms. Bennett,

As we discussed last week, the district was working to select a company to conduct air quality testing in your classroom at Woodland and in the Indoor Practice Facility. Over the weekend, NWA Mold Inspector conducted an inspection of Woodland Jr. High in C-6 and of the Indoor Practice Facility and were sent for analysis to Hayes Microbial Consulting. The Clearance Report and the Analysis Report from the testing are attached.

In both facilities, the carbon monoxide levels were within the normal range. The relative humidity was within the recommended levels. The total indoor airborne mold spore counts were lower than the total outdoor control samples and both facilities were found to be within the normal range for mold.

We are in the process of arranging testing for lead in the water at both facilities. As I stated in my previous email, if you have any information you would like the district to share with the testing company, you may send the information to me via email and the

district will share it with the testing company. Once testing is complete and the district receives results, the results will be shared with you.

In the meantime, if you have any questions, feel free to reach out.

I note that the testing information provided to the claimant by Mr. Mones is consistent with the documentation from Hayes Microbial Consulting and Mr. Suggs found at Respondents' Exhibit 3, pages 75-107.

On April 29, 2022, the claimant sent an email to multiple respondent administrators including Mr. Mones. That email appears to respond to Mr. Mones April 28, 2022, email which stated the results of the respondent's third-party mold testing. The claimant expressed her "concerns about the mold spore numbers presented from the testing done." She also gave advice on testing for lead in the HVAC system and called into question the accuracy of the testing that was done. I note that multiple emails appear in the record in this matter, sent from the claimant to various respondent employees and from respondent employees to the claimant. Those emails are, to a limited extent, documented in Claimant's Exhibit 2, pages 1 and 2, 5-10, 12 and 13, but a more inclusive collection of emails is found at Respondents' Exhibit 3, pages 2-43. The emails from the claimant after her April 29, 2022, response to Mr. Mones' April 28, 2022, email with the testing results are primarily continued complaints or concerns over the testing and coordination over the claimant's working locations as she never returned to her original C6 classroom.

The claimant made a decision to do her own testing of her old C6 classroom. On May 23, 2022, she collected and/or tested for mold using a Petri dish setup. The results of those tests are found in a report found at Claimant's Exhibit 2, pages 14 and 15. On June 26, 2022, the claimant

used a Zefon vacuum dust collector to test for mold in the HVAC system in her old C6 classroom. The results from her test are found at Claimant's Exhibit 2, page 20-24.

The claimant sought medical treatment for mold exposure from Dr. Keith Chambers at Chambers Clinic in Scottsdale, Arizona, in mid to late 2022. On September 30, 2022, Dr. Chambers authored the following letter regarding the claimant:

Based on the medical test results from last spring through the summer, and most recent medical testing completed, it is my evaluation as her primary doctor to request that in order to move forward with certain medical treatments she is removed from any toxic environment. Based upon my findings Ms. Bennett cannot tolerate being exposed to an environment that contains dust or mold particles. Doing so will not only compromise her health condition, but delay improvement from the treatments I am providing for her. Although repetitive exposure to the aforementioned environment would be extremely detrimental, even a single exposure will have negative effects as she does not have the capacity to release these particles from her body and have deleterious effects.

Please see test results below that correlate medical testing with health concerns regarding the environment she taught in. The previous exposure correlates with medical tests performed and corroborate with what has been found in her system. Her health will continue to decline if not removed from the toxic environment.

Dr. Chambers treated the claimant on several other occasions and authored another letter on July 19, 2023, as follows:

I am a naturopathic medical doctor with full prescriptive rights for traditional medications, as well as obtaining additional training in alternative medications and treatments. I received training from Ritchie Shoemaker M.D., a world-renowned medical doctor who specializes in mold disease diagnosis and treatment.

According to the Great Plains Laboratory testing completed, which is a mainstay for mold testing, the fact that of the Aspergillus family, Ochratoxin A showed a very high level in the urine signifying water damage in the environment. In addition,

mycophenolic acid was exorbitantly elevated as well. Mycophenolic acid is produced by penicillium fungus and has the propensity to increase the risk of opportunistic infections.

To investigate this presence of mold disease, testing was performed by use of the ERMI (Environmental Relative Moldiness Index) test which came back conclusive with elevated environmental presence of aspergillus and penicillium molds. The commonality of those two mold spores causes symptoms such as shortness of breath, severe fatigue, headaches, nausea, etc. Due to the severity of symptoms present, the quantitative amount of mold present was extremely high and caused a plethora of other symptoms besides what was listed above. This shows that the conditions were from the classroom environment at the school Mrs. Bennett worked in.

In the GI Map testing completed with our office, there is a high level of elastase presence. Linked below is research that correlates aspergillus/penicillium, which is a type of mold that was found in Mrs. Bennett's mycotoxin urine test.

Additionally, due to the dysbiosis of the gut track, the neurotransmitters were deficient as seen in the Senesco Lab completed 12/29/22. Approximately 70-80% of neurotransmitters are made in the gut track. Due to the deficiency in the neurotransmitters, there is a cascading effect of the presentation of symptoms.

In the presence of mold spores, the staphylococcus aureus grows exponentially. NARES testing was completed by swabbing the nasal passages. The staph bacteria were found in large amounts and indicates the exposure and presence of mold. The danger of staph in the nasal passages is an imbalance in the pituitary gland, which is the master gland and regulates all of the endocrine activity in the body.

In conclusion, based upon all the testing completed, it's conclusive that Mrs. Bennett was not only exposed to mold but sustained the symptoms which properly diagnosed her with mold disease.

Dr. Chambers was called as a witness by the claimant at the hearing in this matter. On direct examination Dr. Chambers was asked about his educational background and his practice as follows:

Q And could you please tell us your educational background.

A I have degrees in biology and chemistry. I also have a Doctorate in Naturopathic Medicine, and MBA in management. A Masters in International Business.

Q And what is your area of practice?

A My area of practice is chronic disease. One of the subsegments of that is mold disease and Lyme disease.

Q And where do you practice?

A In Scottsdale, Arizona.

Q And what is the name of your clinic?

A Chambers Clinic.

Q And do you practice there alone or are there other doctors?

A Other doctors as well. Eight other doctors.

Q And in your qualifications for your specialty, are you also a medical doctor?

A Yes.

Q And so the education that you've had, does that include what we would just think of as normal medical school?

A Yes.

Q And then what on top of that?

A I have full prescriptive rights and then I have other training in all of the alternative medicines: Botanical medicine, IV medicine, Chinese medicine, as well as physical medicine.

Q And does your work background include any experience with toxicology or environmental air situations?

A Yes. I worked as a chemist in environmental toxicology as well as I taught at Mizzou organic chemistry. And I worked for a

company called Watman (phonetic) analyzing different environmental toxicities.

On cross examination Dr. Chambers was asked additional questions about his educational and medical qualifications as follows:

Q You said you were a Naturopathic Doctor?

A That is correct. I am a naturopathic medical doctor.

Q That is not a specialty recognized by the American Medical Association?

A That's right.

Q Okay. You didn't – you went to separate medical school, not to a medical school for an M.D. degree?

A So the clarification on naturopathic medical school is you have – it's a four-year medical school postgraduate and you have full prescriptive rights. And we are recognized as being equivalent to a straight M.D., so to speak.

Q Who recognizes you as being equivalent to a straight M.D.?

A Any pharmacy or any insurances.

In direct examination testimony Dr. Chambers made it clear that he believes that the claimant suffers from mold disease. Dr. Chambers stated that his opinion is within a degree of medical certainty. Dr. Chambers also gave testimony that he had issues with the testing done by the respondents as follows:

Q Have you had an opportunity to review the report in evidence that was done by Hayes Microbial Consulting where they looked at the air in the school?

A Yes.

Q And again, you've already testified of your experience in environmental work, but is there anything that you observed in that report that was concerning to you?

A With the air handling?

Q Yes.

A So one thing I noticed on the air handling was the testing was very short. I think it was five minutes and in a few different locations. One of the locations was on top of the desk. Generally, when they go and they do an air filtration, my experience, they will leave those – first of all, it is on the floor because the spores settle on the floor. Also, usually it's a 12- to 24-hour collection to get a true composite sample of what is in the room or rooms.

Q And the results, I believe in one place is 267 and another 200 meters cubed within the room, the C6 room. What do those numbers mean to you?

A So those numbers are either at or above the threshold to show that there was indeed mold spores that are an unacceptable range, even with the brief sample collection.

On cross examination Dr. Chambers was asked about testing done on the claimant for mold exposure as follows:

Q What objective testing of her symptoms did you do?

A As I said, I did the nasal swab.

Q Okay. The nasal swab told you what?

A The nasal swab said – that explains that she had been exposed to high areas of mold exposure.

Q But it didn't tell you where that exposure occurred?

A No, sir.

Q You performed a nares swab on January 26, 2023. Do you recall that or have the records related to that?

A Yes.

Q And she did have staph as a result of the January 26, 2023 culture; correct?

A Yes.

Q But did not have – and I am going to butcher this word – Aspergillus?

A That's right.

Q What is Aspergillus?

A Aspergillus is a particular type of bacteria.

Q Mold?

A It is related to mold, yes.

Q Okay. Is that an indication as mold disease?

A When you have Aspergillus?

Q Yes.

A It is often accompanied, but it is not diagnosed by that.

Q Okay. According to your test results, she did not have the Aspergillus in the January 26, 2023 culture, but did have it in the July 12, '23 culture?

A Yes.

Q So she got Aspergillus somewhere between those two dates. Is that consistent with your test results?

A That would be.

Q Okay.

A Because continual exposure, they can morph into other things as you go along.

Q And she did not have the staph in July, so that was gone?

A After treatment.



Q Okay. She wasn't in the C6 classroom between January 26, 2023 and July 12, 2023; was she?

A I wasn't –

Q You don't have any idea where she was?

A All I know is she was doing what she does in school.

Q Okay. but if she was not in the C6 classroom, you can testify that she didn't get the Aspergillus in the C6 classroom at Woodland Junior High; correct?

A That would make sense. That is a commensurate bacteria.

The respondents in this matter called Joe Henry as a witness. Mr. Henry is employed by ATOKA Environmental Engineering Consulting Firm, located in Little Rock, Arkansas. Mr. Henry's deposition, taken on April 30, 2024, was also admitted into evidence as Claimant's Exhibit 3. Mr. Henry testified that his firm is a "dedicated environmental consulting company that is involved in all phases of environmental issues, both indoor and outdoor." Mr. Henry's curriculum vitae and list of litigation cases is found at Respondents' Exhibit 5, pages 1-9. It includes a B.S. in Biology/Microbiology from the University of Arkansas and graduate Microbiology Studies from the Memphis State University. Also included are several litigation cases where Mr. Henry served as an expert witness for both plaintiffs and defendants.

On direct examination Mr. Henry was asked about his review of the present matter and his opinions about that review as follows:

Q Okay. And you and I have never met before I got in touch with you in connection with this case; is that right?

A Have not. That is correct.

Q At my request, did you review certain documents?

A I did.

Q And did those consist of tests done by Brian Suggs at the Woodland Junior High?

A Yes.

Q Along with two other test results that were done by Ms. Bennett?

A Yes.

Q Okay. Let me start first with the test done by Brian Suggs. Do you know Brian?

A I do not.

Q Okay. Were the test results that he produced and the lab that he used produced, were those the type of mold testing results that you normally see?

A Usually.

Q Okay. And did you review those?

A I am sorry?

Q Did you review those? Let's talk first about C6, the classroom.

A Okay.

Q Did you review those?

A I did.

Q And those have both an indoor component and an outdoor component; is that correct?

A That is true.

Q Why is that important?

A Well, that raises a lot of issues. The consensus over the years has been that when you take samples that you want to determine their origin or if, in fact, they are hazardous or toxic or

harmful in some way, then you compare those test results with the results taken outdoors and that is why the outdoor sample is listed in this battery of tests.

Q Okay. Mold is everywhere?

A Mold is everywhere.

Q Bunches of different kinds?

A A lot of different kinds.

Q Okay. I am going to try to be fairly general here. When you reviewed the test results that Brian did, was there anything that concerned you from a safety standpoint?

A No.

Q None of the rest of us, or maybe some of the rest of the folks here have, but I am not an expert in mold tests, but generally speaking, was the volume of mold that showed up either inside or outside alarming or significant?

A They were relatively minor.

Q Would you consider those to be clean environment?

A I would, as designated by the definition of clean.

Q Okay. As far as the individual molds themselves, was there anything identified inside the classroom or inside the indoor practice facility that isn't present in the general atmosphere?

A The profile of molds that were present were pretty typical for indoor environments.

Mr. Henry was also asked on direct examination about the testing performed by the claimant as follows:

Q Okay. Did you review – I think you have already indicated you reviewed the test done by Ms. Bennett.

A Yes.

Q Okay. One of them, I think, was a Petri dish test?

A True.

Q Can you tell us what, if anything, you gleaned from the test, the Petri dish test?

A Well, laymen, people who are interested to try to figure out what is going on in their house, can buy a Petri dish filled with an agar that would grow mold if you expose it to the air. And as intriguing as that may sound, it is really not a reliable method of getting an idea of what is in the air or how much or where it came from.

Q Okay.

A And it is just you expose a plate to the air for 15, 20, 30 minutes. And molds are typically blowing around in the air from air currents and some of them will settle on the surface of that agar and you could incubate it and it will grow.

Q If I put a Petri dish in this room and left it for X number of minutes or hours and then went through the incubation process, what would you expect?

A There was either mold in the air or there wasn't.

Q Okay. As far as being able to use that test to determine whether there was something inside the classroom that wasn't present outside, does that test tell you anything?

A Only if whatever was present was something that raised an eyebrow.

Q And did it?

A No.

Q There is also an ERMI test that she did.

A Uh-huh.

Q Is that a "yes"?

A Yes. Sorry.

Q What is the ERMI test for?

A Well, the ERMI test was developed by the government to try to better evaluate indoor air quality concerning mold growth.

Q Okay.

A And did a lot of work on it and came up with this moldiness index and this method was developed. And it is conducted and run in a laboratory by collecting dust from around the house. And typically it is one or two square meters of area using different types of collection material. I think Swiffer is used nowadays pretty typically to collect mold, dust, and those kind of things that would be present in dust.

Then that is sent in to a laboratory that is equipped with the equipment to analyze that, and also to convert the test results to an index or a number that could tell us whether the environment in a house was or had been mold in it at some particular time.

And based on that index or the number, that it would be either low, no hazard; middle, relative hazard; and then a high number with possibly a good hazard or a bad hazard, rather.

Q And did you review her results?

A I did.

Q And what was your –

A I don't remember what the number was.

Q Okay.

A I think it was a little on the high side, if I am not mistaken.

Q Okay. Is that a test that you routinely use in your business?

A No, we don't.

Q Why?

A Well, there are restrictions about what you can interpret from that mold test. It is scientifically thought out. It is

scientifically analyzed using statistical evaluations and all that kind of thing. And it will pick up the DNA from any kind of mold that is present. I think there are something like 36 different molds on this panel of molds that are tested for and typically they are ones that you would normally see indoors and some that you would see outdoors. And they compile all of that information into the score that I've described.

Now, if I were going to come to a conclusion about what that meant, that tells me that at one time if there is a high score – and this could be over a long period of time. It could have been over five years, ten years. It depends on how clean the house is. It depends on how much outside air is introduced into the house. And it depends on how much is collected in hidden areas that you would normally go look for dust. Most of us don't clean up under a couch or in the back of a closet or somewhere like that as often as we would a tabletop, for example.

So the numbers and test results that we get from that would indicate that, okay, maybe there was at one time a lot of mold there. Where did it come from? Did you take one outside? Did you take one or two or three or four in the rest of the house and see what those were? What does the rest of the house look like? One test is not going to tell us as much. It may say, okay, if it is a high number, it may be prone to have been a problem at one time or it could possibly be something current, but we don't know that unless we take other types of tests that we normally run indoors.

Q Okay. From that test result, can you say anything about whether there was something unusual or significant in that classroom?

A I really can't.

Q Okay.

A And if I could give you a for instance, a hypothetical. If, for example – and we have been trained over the years to know what to look for in the environment. But for example, I go into a classroom or a bedroom or wherever and take a series of tests to see what the profile and the concentration of mold spores are in a given environment and there is one particular mold that is sky high, say in the neighborhood of 25,000 spores per cubic meter are there and it is kind of a loner. There may not be but one or two other molds present. That tells me that has a source that is

localized and that it is giving off a large number of spores into the air because the air currents will disturb the colonies and you will get a higher number inside of a contained environment like this room.

So if I saw something like that, I would say, okay, we have got a problem. We need to look further and see where that problem is originating so we can get rid of it.

Q And in the ERMI test that she provided, the results you reviewed, was there anything alarming?

A Well, if I used that and compared it to the test results that were done from the mold sampling, I couldn't really make a correlation.

Q Okay. Some people are more susceptible to mold than others; correct?

A True.

Q Okay. And I guess some molds are more dangerous than others?

A Indeed they are.

Q Did you notice anything in any of these test results where there was a mold that was particularly dangerous from a scientific standpoint?

A Not comparing to what is found in the literature, no.

Mr. Henry was also questioned on direct examination about the source of mold for instances where a person is susceptible to it and its effects as follows:

Q Okay. If you are going to try to make some conclusion about the source of mold in a person who is susceptible to mold, would you necessarily need to exclude other places of possible exposure?

A Certainly.

Q Like in a house where they live?

A Yes, sir.

Q And would it be fair from a scientific standpoint to conclude that Ms. Bennett's problem was mold exposure, if she, in fact, has one, was due to the classroom when her house was never tested?

A It would be nice to know what her history had been and whether or not she had been predisposed; whether or not she has underlying autoimmune conditions. Any of those things are factors that would signal whether she is allergenic or not allergenic. I don't know that, but it is something that would be important to know. It would be important to know the background of where she had lived previously and what exposures might have occurred then.

Q Okay. So in the absence of that kind of testing, it would be speculation or conjecture?

A It's speculation.

On direct examination Mr. Henry was also asked about questions he answered from the claimant's attorney in his prehearing deposition, found at Claimant's Exhibit 3, as follows:

Q Okay. Now, we have already established mold can be a problem anywhere; correct?

A It can.

Q And you gave your deposition not long ago to Ms. Brooks; is that correct, in connection with this case?

A Yes, I did.

Q And she showed you some photographs that showed water damage and you agreed that that could be a problem?

A Oh, definitely. Sure.

Q If left unattended; correct?

A Yes, sir; that is correct.

Q And do you know when that water damage occurred?



A I do not.

Q Or when it was corrected?

A I do not.

Q Or how long it was there.

A I do not.

Q Okay. HVAC systems, they can be a problem; correct?

A They are a localized source of mold problems, yes.

Q Okay. And we don't know what this system was like; correct?

A We do not.

On cross examination Mr. Henry was asked about mold being everywhere and the difference between a clean area and a moldy area as follows:

Q Mr. Henry, so if there is mold everywhere, mold outside, mold inside, why don't we try to eradicate outdoor mold? Why is it indoor mold that seems to bother us?

A Well, that is an interesting question. Indoor mold tends to be – when we are exposed to larger quantities of mold in an environment like in our home that is moldy or has water damage at some point, they are constantly breathing that in in a concentrated source.

Q So there is no fresh air to kind of move that out?

A There is no fresh out to dilute it.

Q Okay. So when you say particularly dangerous mold, would you agree that the standard is no mold is the best mold? That any mold in an indoor environment can be dangerous?

A Well, not necessarily.

Q Okay. Well, you said that the mold sample that she took in these Petri dishes did not raise your eyebrows or I think that is what Mr. Arnold said.

A I don't use those as a tool and I don't rely on them.

Q What did those show? What kind of mold was in those dishes?

A I don't recall what was on the plates or what the test results were.

Q Okay. So what is the definition of clean?

A The industry, the indoor air quality industry is not regulated by any branch of the government. There are no standards by which we have to meet in order to qualify a home or a business or a plant whereby a certain level of mold spore density has to be maintained.

Now, there are limits based on all the research that qualifies a home as being either clean or moldy. Now, that is not implying infection. That is not implying sensitivity or allergenic responses. This is implying whether a home should be cleaned up or if it is normal, which would be any value less than 1,000 mold spores per cubic meter of air. Anything growing over about 1,200 – I'm sorry, about 1,300 mold spores would be considered moldy.

The claimant has asked the Commission to determine whether she sustained a compensable occupational illness to her body as a whole due to exposure to mold in the workplace on or about February 28, 2021. Here, the claimant's claim is for a compensable occupational disease, specifically mold disease. Pursuant to A.C.A. §11-9-601(e)(1), an occupational disease is any disease that results in disability and arises out of and in the course of employment. Furthermore, the claimant has the burden of proving by a preponderance of the evidence that a causal connection exists between her occupation or employment and the occupational disease, A.C.A. §11-9-601(e)(1)(B).

Dr. Chambers, during his in-person testimony, stated that he believed the claimant to have mold disease within a degree of medical certainty. While I am not making a finding as such, I will base my opinion on the supposition that the claimant does have mold disease. Given that supposition, that mold disease exists within the claimant, she must still show a causal connection between her mold disease and her employment with the respondent to a preponderance of the evidence. I find that the claimant is unable to do so.

The respondents had a qualified third party perform unrestricted testing on areas that concern the claimant. Those areas were areas that the claimant spent the vast majority of her time working in for the respondent. Those areas, when tested, were within normal range. The claimant is unable to prove that mold existed anywhere in the respondents' facilities that would have affected her health or caused mold disease. The claimant conducted her own testing after the testing done by the respondents. The claimant is not qualified or specialized in doing such tests but wishes the Commission to rely upon them. In fact, those tests according to Mr. Henry, who is an expert in such matters, were normal or unrevealing of mold issues in the areas she tested. The claimant's own testing also failed to account for any outdoor mold around the respondents' facilities she tested, as she did not do any outdoor testing. The tests performed by the claimant have very little weight. The testing performed by the respondents, who hired a third-party mold inspector with proper qualifications, gives way to much more weight in determining the mold levels in the respondent's facilities. Those tests found the building to be "clean" as it relates to mold levels.

The credibility of witnesses and the weight to be given to their testimony are matters solely within the province of the Commission. *Ringier America v. Combs*, 41 Ark. App. 47, 849 S.W.2d 1 (1993).

The claimant's husband was also listed as witness in this matter but was unavailable for the hearing due to an emergency. The parties agreed to the following regarding the claimant's husband's testimony:

MS. BROOKS: Your Honor, we were going to – I can't remember what you said yesterday about Mr. Bennett who could not be here.

THE COURT: Sure. Let's take that up now. I think it is an appropriate time to do so.

Yesterday, my office received an email and then we had a telephone conference between the attorneys in this matter, Mr. Arnold and Ms. Brooks, regarding I believe it was the Claimant's spouse and he was anticipated to be a witness in this matter today, but had a personal emergency that required his out-of-state travel. He is no longer in Arkansas.

It is my understanding that Mr. Arnold has agreed to stipulate that any of the testimony given by the Claimant would be confirmed by her spouse's testimony about I guess – well, I don't want to get into the details, but his testimony would corroborate her testimony.

MR. ARNOLD: That is correct. I think we also discussed from a credibility standpoint, her credibility would attach to him as well; is that correct?

THE COURT: I believe we did discuss that, that I would rely upon her credibility for his credibility as well and I think the parties have agreed to that; is that correct?

MR. ARNOLD: That is correct.

MS. BROOKS: Yes, Your Honor.

MR. ARNOLD: And I am agreeable to that stipulation.

The claimant gave cross examination testimony about her telling a medical provider that she had her home tested for mold and "there were no red flags" as follows:

Q Maybe I am getting a bit ahead of myself right now, but the folks in St. Louis – and there is a report or two from them in here – but you told me that you had tested your home and that there were no reflags: correct?

A Yes.

Q That was a lie; wasn't it?

A I did test the home. It was damaged in the mail. My husband and I decided to go through the house again and decide if we were going to further test again and we did not.

Q When I took your deposition, I asked you if you had done any tests, any tests on your home, your car or anywhere else and you told me no. And now for the first time you are saying, yeah, we did test it, but the results were lost in the mail?

A At the time of the deposition, I didn't remember. It was done – we just talked about this the other day. It was done right at the beginning. It was damaged in the mail by the company. They called us and I said I am not going to retest, but I don't think my house has mold in it. I know where I feel sick.

Q Okay. Because you told the people at the school, you know, that you spent the majority of your time in three places. Okay?

A Yes.

Q The classroom at C6 and you said that you were there five to six hours a day?

A Yes.

Q In that one room?

A In that room.

Q Without leaving?

A No. I even ate my lunch in there.

Q All right. Did you teach in the summer in that room?

A No.

Q Okay. So would you teach for roughly eight or nine months out of the year in that room?

A Probably nine to ten months out of the year, yes, sir.

Q Okay. The second area you identified was the – I think we talked about the BARC?

A The BARC is what they called it, yes.

Q Okay. Tell me what those initials stand for.

A Bulldog – I have no idea.

Q Okay. B-A-R-C?

A B-A-R-C. It's an acronym, yes.

Q Okay. It is the indoor practice facility?

A Yes, sir.

Q And how many hours a day would you spend there?

A There was two days a week, not back to back, that I would spend a couple of hours with the pole vaulters.

Q Okay. And was that year-round or did you practice outside?

A We would go outside when the weather got better.

Q Okay. As a matter of fact, I think in some of the emails between you and the school district, you generally started the indoor training around Halloween?

A Yes.

Q Okay. So you would spend a couple of hours a couple of days a week for a period of four or five months in the wintertime?

A Yes. I would say that is about right.

Q Okay. And the third place that you identified was your home?

A Yes.

Q And how many hours a day do you spend in your home?

A I don't know. Sleep hours. Dinner hours. Weekends.

Q Yes.

A Yes.

Q How many hours a day?

A Do you want me to do the math?

Q Yeah.

A I get home at 4:30 or 5:00, so that is – I don't know, honestly. Normal hours, I would go home, get home between 4:00 and 5:00, unless I had to go to the BARC to do pole vault practice in the evenings, and a couple of days a week for that, and then the weekends. So for 48 hours on the weekend and 12 to 14 hours at night sleeping, yeah.

Q Okay. So without question, the majority of your time was spent in your home and not in C6 or in BARC?

A Yes.

Q Okay. And at your request, the school had a professional come in and test your class and BARC and those test results are here before the Judge today. Yet, the place you have spent the most time is your home and we don't have any testing there?

A Correct.

Q Despite the fact that you told your doctors that you had done it and there weren't any red flags?

A There is no testing done, yes.

Q Why did you lie to your doctors?

A I don't remember. I do not believe my house had mold in it. I still stand to that.

Q Okay. You didn't think the schoolroom had mold in it before the testing, did you, Ms. Bennett?

A Mold wasn't even in my brain before the testing. That wasn't even something that I knew anything about it.

The claimant was also asked on cross examination about relating information to the respondents that mold testing was done in her home, and it was negative as follows:

Q Okay. I am referring now to Page 10 on the Respondents' Nonmedical Exhibits. You talk about here the three places that you spent 99 percent of your time. You state, "I will be having testing done in my own home as well."

So you knew that that was important?

A Yes. If I stated it, I thought it was at this time.

Q Okay. I want to call your attention – and I will have you read this. Let's look at Page 15 of Respondents' hearing exhibit. I have a sentence in the middle of that circled here and highlighted. Would you read what your April 19, 2022 email to the Fayetteville School District representative says.

A In the red?

Q Yes.

A "We had mold testing done in our home and it was negative for mold which was a relief for us to know our home is safe."

Q Okay. And that is a lie?

A I don't remember results from a test like that.

Q You didn't do it other than the other that got lost in the mail or whatever.

A I don't know. I don't know how to answer that. I don't remember doing a test result that gave me a negative or anything.



Q Okay. So the statement – I am going to read it myself – “We had mold testing done in our home and it was negative for mold which was a relief for us to know our home is safe.”

That is an inaccurate, false statement?

A I do not have results from a test that I stated that I had done.

Q Why did you lie to them?

A I don't remember that. I can't answer that question.

Given the importance of finding the source of the mold that the claimant believes caused her alleged mold disease and the claimant's dishonesty to a medical provider and to the respondents, I find the claimant's credibility to be low. The claimant spent the majority of her time in her home and did not have her home tested, then was untruthful about doing so. The claimant states that she and her husband inspected the home for mold and found it safe. Trained and qualified mold inspectors cannot do what the claimant claims to have done. To determine the presence of mold, tests must be performed, and laboratories must determine the results. But the claimant and her husband's untrained eye making such a determination is simply unreasonable. The claimant may very well suffer from mold disease, but she is unable to prove by a preponderance of the evidence that any respondent facility is causally linked or related to her alleged mold disease.

From a review of the record as a whole, to include medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witnesses and to observe their demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

**FINDINGS OF FACT & CONCLUSIONS OF LAW**

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on March 4, 2024, and contained in an Amended Pre-hearing Order filed March 12, 2024, are hereby accepted as fact.

2. The claimant has failed to prove by a preponderance of the evidence that she sustained a compensable occupational illness to her body as a whole due to exposure to mold in the workplace on or about February 28, 2021.

3. The claimant has failed to prove by a preponderance of the evidence that she is entitled to medical treatment for her alleged occupational illness due to exposure to mold in the workplace.

**ORDER**

Pursuant to the above findings and conclusions, I have no alternative but to deny this claim in its entirety.

If they have not already done so, the respondents are directed to pay the court reporter, Veronica Lane, fees and expenses within thirty (30) days of receipt of the invoice.

**IT IS SO ORDERED.**

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**HONORABLE ERIC PAUL WELLS  
ADMINISTRATIVE LAW JUDGE**