

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2010 MTWCC 36

WCC No. 2010-2531

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ALLISON CHAPMAN

Petitioner

vs.

TWIN CITY FIRE INS. CO.

Respondent/Insurer.

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FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT  
AND ORDER DENYING MOTION FOR SANCTIONS

**APPEALED TO MONTANA SUPREME COURT 12/29/10  
DISMISSED WITH PREJUDICE 02/15/11**

**Summary:** Petitioner alleges she suffered an occupational disease from working at computer workstations which were not properly ergonomically configured.

**Held:** Although the medical evidence demonstrates that Petitioner suffers from a cervical condition, Petitioner has not proven that a causal relationship exists between her condition and her employment. Her occupational disease claim is therefore denied.

**Topics:**

**Causation: Medical Condition.** Although Petitioner opined that her work conditions aggravated or exacerbated her underlying degenerative disk disease, the only causal evidence presented was an opinion letter from an F.N.P. who stated that Petitioner's job duties "may" aggravate her shoulder pain. This evidence only indicates the possibility that Petitioner's job duties may have aggravated her underlying condition and does not meet Petitioner's burden of proving that it is more probable than not that her condition is work-related.

**Occupational Disease: Causation.** Although Petitioner opined that her work conditions aggravated or exacerbated her underlying degenerative

disk disease, the only causal evidence presented was an opinion letter from an F.N.P. who stated that Petitioner's job duties "may" aggravate her shoulder pain. This evidence only indicates the possibility that Petitioner's job duties may have aggravated her underlying condition and does not meet Petitioner's burden of proving that it is more probable than not that her condition is work-related.

**Sanctions.** Where Petitioner failed to prove an entitlement to benefits, her motion for sanctions against opposing counsel for failing to mount a defense is without merit.

¶ 1 The trial in this matter was held on October 20, 2010, in Great Falls, Montana. Petitioner Allison Chapman was present and represented herself. William O. Bronson represented Respondent Twin City Fire Ins. Co. (Twin City). Claims Adjuster Linda Slavik also attended on behalf of Twin City.

¶ 2 Exhibits: The Court admitted Exhibits 1 through 32, 34 through 38, and 41 without objection. The Court admitted Exhibit 33 over Chapman's relevancy objection. Chapman produced Exhibit 39 at trial. Twin City withdrew its foundation objection to Exhibit 39 and the Court admitted it over Twin City's relevancy objection. The Court did not admit Exhibits 40 and 42, pursuant to its ruling on Twin City's motion *in limine*.

¶ 3 Witnesses and Depositions: The deposition of Chapman which was filed in Workers' Compensation Court Cause No. 2009-2346 will remain filed in that case, but will be considered as evidence in this matter and incorporated by reference. Allison Chapman and Cathy Gutowski were sworn and testified.

¶ 4 Issues Presented: The Pre-Trial Order sets forth the following issues:<sup>1</sup>

Issue 1: Whether Petitioner suffered an injury or occupational disease while in the course and scope of employment on the date alleged; and

Issue 2: Whether Petitioner is entitled to payment of any indemnity and/or medical benefits, and/or penalty on any benefits awarded.

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<sup>1</sup> Pre-Trial Order at 3.

## FINDINGS OF FACT

¶ 5 Chapman was hired as a customer service representative with NEW beginning May 17, 2004.<sup>2</sup> Her job duties consisted of spending most of her work shift on the phone scheduling service for customers.<sup>3</sup> Chapman initially worked from 10 a.m. to 10 p.m. on Mondays, Wednesdays, and Fridays. Her schedule eventually changed to 9:30 a.m. to 5:30 p.m. with a two-hour lunch break Monday through Friday. Chapman worked the latter schedule until her employment with NEW ended.<sup>4</sup>

¶ 6 Chapman testified at trial. I found Chapman's trial testimony credible.<sup>5</sup> Chapman testified that she sought medical treatment after experiencing severe shoulder pain with pain radiating into her arms. Chapman alleged that the most likely cause of her pain was from computer use and her workstation at NEW. Chapman testified that her arms are weak and she has constant headaches and blurred vision which she believes are caused by her working conditions at NEW.<sup>6</sup>

¶ 7 Angel Johnson, F.N.P., saw Chapman on January 15, 2008, for right forearm pain and a rash on her neck. Chapman reported that she had had the pain in her arm for at least 8 months, and that it had worsened in the last month. Johnson noted that Chapman's job required repetitive movements of her right hand and forearm. Johnson opined that Chapman's forearm pain was tendinitis and recommended that Chapman wear a Velcro strap at work, rest her arm as much as possible, and ice it twice a day to decrease the inflammation.<sup>7</sup>

¶ 8 On February 5, 2008, Chapman returned to see Johnson and complained of pain in her left arm which began approximately 10 days earlier after a fall. Johnson noted that Chapman had left shoulder pain, but further observed, "She is out of pain medication and I suspect that is the main reason she is here today." Chapman was reluctant to agree to an x-ray or to go to physical therapy.<sup>8</sup>

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<sup>2</sup> Ex. 38 at 3.

<sup>3</sup> Chapman Dep. 6:17-23.

<sup>4</sup> Chapman Dep. 7:2-8.

<sup>5</sup> In *Chapman v. Twin City Fire Ins. Co.*, 2010 MTWCC 30, I did not find Chapman to be a credible witness. In the present case, Respondent's cross-examination did not evoke any serious challenge to Chapman's credibility; however, my finding of credibility in the present case in no way changes my finding in the previous decision.

<sup>6</sup> Trial Test.

<sup>7</sup> Ex. 13 at 1-2.

<sup>8</sup> Ex. 13 at 3.

¶ 9 On February 19, 2008, Chapman had x-rays taken of her shoulders which were interpreted as normal.<sup>9</sup> An x-ray of her cervical spine on that same date revealed distinct disk space narrowing at C5-6 with no neuroforaminal stenosis.<sup>10</sup>

¶ 10 On March 14, 2008, Chapman filled out a Statement of Injury in which she stated that no accident occurred, but that an injury took place over time: “Strain on Arms just doing my Job Carp Tunnel Like.”<sup>11</sup>

¶ 11 On March 31, 2008, Chapman filed a First Report of Injury or Occupational Disease. In the report, she listed February 27, 2008, as the date of injury and described the accident as “CARPEL TUNNEL LIKE SENSATIONS IN BOTH ARMS CAUSED BY DAILY WORK AT A DESK OPERATING A COMPUTER, MOUSE AND PHONE.”<sup>12</sup> Chapman testified that no particular incident occurred on February 27, but rather she experienced a build-up over time of shoulder pain and numbness, tingling, and pain in her arms. Chapman attributed the arm symptoms to carpal tunnel syndrome.<sup>13</sup> Chapman estimated that she first began to experience these symptoms approximately six months earlier, and they worsened over time.<sup>14</sup> Chapman noticed that her symptoms would worsen throughout the workday.<sup>15</sup>

¶ 12 On April 18, 2008, claims adjuster Linda Slavik denied Chapman’s claim, noting that the insurer had requested, but not yet received, any medical records.<sup>16</sup>

¶ 13 On May 13, 2008, Chapman returned to see Johnson. She complained of a headache and requested a refill of her prescriptions. Johnson noted that Chapman reported that her shoulder pain has improved with rest. At a visit later that same day, Johnson prescribed Flexeril for muscle spasm and pain as Chapman had “terrible tension” in her neck and shoulders.<sup>17</sup>

¶ 14 On May 14, 2008, Johnson replied to a letter Slavik had sent a few days earlier. The questions and responses were, in pertinent part:

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<sup>9</sup> Ex. 18 at 1.

<sup>10</sup> Ex. 18 at 3.

<sup>11</sup> Ex. 2.

<sup>12</sup> Ex. 1. Chapman had an additional, unrelated workers’ compensation claim at NEW which will not be described in these Findings and Conclusions. (See *Chapman v. Twin City Fire Ins. Co.*, 2010 MTWCC 30.)

<sup>13</sup> Chapman Dep. 10:24 – 11:21.

<sup>14</sup> Chapman Dep. 12:2-9.

<sup>15</sup> Chapman Dep. 13:15-19.

<sup>16</sup> Ex. 27.

<sup>17</sup> Ex. 13 at 6.

[Q.] Based upon your medical opinion and the objective medical findings, are the occupational duties the major contributing cause of the occupational disease and what are the objective findings to support your position?

[A.] Patient was seen 1-15-08 for Rt forearm pain. I believed this to be a tendonitis related to her repetitive movements at her desk job. Pain greater than 8 months, worse at work [illegible] repetitive movements of typing & taking phone calls[.] She complains of weaker grip, pain in forearm. Denies numbness or tingling. Tender to palpation over forearm as if inflamed [sic]. [F]urther visits on 2-5-08 & 2-19 -08 not related to this [--] she had a fall on 2 occassions [sic]. Pt never presented with any complaints that her original visit was a work comp claim. [F]uture visits were related to her falling & not her work environment. I do feel her job related duties did aggravate the pain she was experiencing from her falls.

[Q.] What is your diagnosis, prognosis and treatment plan for this condition?

[A.] 1-15-08 Recommended Velcro strap for tendonitis to wear @ work. Encouraged to rest limb, ice area 20 minutes 4x/day. She was given celebrex & vicodin for pain. I also encouraged physical therapy which she declined.

2-5-08 Injury related to fall . . . .

2-19-08 c/o pain in both shoulders & pain in Lt foot from dropping a stove on it. . . .

Seen 2-26-08 continued chronic shoulder pain > 6 weeks. . . . Advised to follow up & has not returned.

Pt original visit re: tendonitis of rt forearm I believe could be fixed if not already, by an ergonomic evaluation of work site & physical therapy eval & treatment plan.

Regarding her shoulder pain, I can not say this is a result of her job but I believe it may aggravate the pain she may be experiencing. She could benefit from physical therapy & ergonomic eval of worksite.<sup>18</sup>

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<sup>18</sup> Ex. 13 at 7-8.

¶ 15 On May 20, 2008, Slavik again denied Chapman's claim, stating, "After considering [information received from your medical provider for right forearm pain] as well as reviewing exam notes, we must respectfully continue to deny your workers' compensation claim. Your medical provider indicates that you fell on your arm on February 5, 2008 and had another injury on February 19, 2008." Slavik further stated that Chapman's medical records did not reflect that her occupational duties were the major contributing cause of her condition.<sup>19</sup>

¶ 16 On August 11, 2008, J. W. Bloemendaal, M.D., saw Chapman for bilateral shoulder and lumbar pain. Dr. Bloemendaal examined Chapman and found that she had excellent range of neck motion and excellent strength and reflexes in her arms with full and complete range of shoulder motion on the right. He noted that Chapman had mild limitation in the extremes of motion with subacromial tenderness on the left. Dr. Bloemendaal noted that his review of Chapman's x-rays revealed degenerative changes between C5 and C6 which might be causing pain radiating into her shoulders.<sup>20</sup>

¶ 17 Chapman contends that on August 11, 2008, she became aware of an occupational disease arising out of or contracted in the course and scope of her employment with NEW. Chapman contends that the occupational disease is, "degenerative disc disease, exacerbation, acceleration, aggravation, which originated through employment as follows: working without proper ergonomics, overuse of computer keyboard, and repetitive stress."<sup>21</sup>

¶ 18 On August 15, 2008, Chapman went to the Monarc Clinic in Great Falls, complaining of pain in her left shoulder, tailbone, and right foot. Chapman reported that she had experienced pain in all three areas of pain for at least a year and there was no particular incident which triggered any of them. After examining Chapman, PA-C J. Greg Scott noted that her symptoms were consistent with left shoulder impingement and plantar fasciitis, and that she had a subjective report of tailbone pain which appeared to be more over the upper one-third of the sacrum and could be a sacral ligament sprain.<sup>22</sup>

¶ 19 On March 23, 2009, Chapman attended an appointment with Aimee Hachigian-Gould, M.D., and complained of pain over the posterolateral aspect of the left shoulder up into her neck. Dr. Hachigian-Gould noted that an earlier x-ray had revealed degenerative changes at C5-6, and that Dr. Bloemendaal had believed these findings

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<sup>19</sup> Ex. 28.

<sup>20</sup> Ex. 9 at 3.

<sup>21</sup> Pre-Trial Order at 3.

<sup>22</sup> Ex. 7 at 2-4.

might be responsible for Chapman's pain. Dr. Hachigian-Gould noted that Chapman had bilateral shoulder pain, but that it was worse on the left where it radiated down her arm and into her hand. On examination, Dr. Hachigian-Gould found that Chapman had generalized paraspinous muscle spasm of the cervical spine in the trapezius with multiple trigger points on the left side; a lack of 15 degrees of forward flexion on the left, and difficulty raising her left hand to the back of her head. Chapman had full range of motion on the right and no impingement signs bilaterally. Dr. Hachigian-Gould noted that it was possible Chapman could have a rotator cuff tendinopathy with adhesive capsulitis, but she believed it was more likely that Chapman's pain was referred pain from a probable disk herniation at C5-6. Dr. Hachigian-Gould requested x-rays of the cervical spine and an MRI of the cervical spine and left shoulder.<sup>23</sup> She further noted:

[Chapman] brought in a family leave form from the N.E.W. Company and this was filled out for the patient. She tried very hard to get me to stay [sic] that she could not work, but I certainly think she could work at her job at N.E.W. which requires her to use a keyboard but allows her frequent position changes and basically does not confine her to one particular area.<sup>24</sup>

¶ 20 On March 31, 2009, Chapman had an MRI taken of her cervical spine. The radiologist found minor degenerative disk disease at C3-4; a small posterior disk bulge with minimal osteophytes and minimal foraminal narrowing at C4-5; a small right posterior parasagittal focal disk protrusion with mild effacement of the right anterior aspect of the thecal sac and spinal cord with neural foraminal narrowing on the right at C5-6; and a diffuse posterior disk bulge with minimal effacement of the ventral aspect of the thecal sac at C6-7.<sup>25</sup> An MRI of her left shoulder that same day was unremarkable.<sup>26</sup>

¶ 21 On April 2, 2009, Dr. Hachigian-Gould noted that the MRI of Chapman's shoulder was entirely within normal limits. However, the cervical spine MRI revealed a focal disk protrusion at C5-6 mainly to the right with narrowing of the right C5-6 neural foramen. Dr. Hachigian-Gould also noted central canal narrowing at C4-5 with bilateral neural foraminal narrowing. Dr. Hachigian-Gould opined that a C5 and C6 radiculopathy would be consistent with Chapman's bilateral posterior shoulder complaints. She decided to refer Chapman to either Dr. Paul Gorsuch or Dr. John VanGilder for further evaluation and a second opinion. Dr. Hachigian-Gould further noted:

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<sup>23</sup> Ex. 10 at 1-2

<sup>24</sup> Ex. 10 at 2.

<sup>25</sup> Ex. 16 at 1-2.

<sup>26</sup> Ex. 16 at 3.

[Chapman] again tried to get me to determine that she is incapable of working as she has had some attendance problems secondary to her pain. I explained that it was her choice to stay home from work and that I do not see any reason that she cannot continue with her usual sedentary job.<sup>27</sup>

¶ 22 On April 7, 2009, Chapman attended a medical consultation with John VanGilder, M.D.<sup>28</sup> Dr. VanGilder took a history from Chapman, noting that she reported pain in her neck and shoulder pain down into both arms which had been going on for approximately a year and a half to two years. Chapman told Dr. VanGilder that she believed the position she sat in at work with her arms outstretched to reach her computer might be responsible for her pain. On the MRI films, Dr. VanGilder noted mild spondylitic disease at C4-5 with a disk osteophyte complex on the right at C5-6 and a disk osteophyte complex on the left at C6-7. Dr. VanGilder discussed treatment options with Chapman, including the option of a C5-6, C6-7 anterior cervical discectomy, allograft, fusion, and plating. Chapman decided that she wished to pursue surgery.<sup>29</sup> However, Dr. VanGilder ultimately did not perform surgery on Chapman. On May 13, 2009, he terminated her as a patient because she was verbally abusive to his staff and behaved inappropriately in his office. He offered to refer Chapman to another physician.<sup>30</sup>

¶ 23 Chapman saw Michael J. Matury, D.C., on June 2, 2009. She reported neck and arm pain which increased with prolonged computer use. Dr. Matury reviewed the cervical MRI and noted disk bulges at C5-6 and C6-7, with possible early radiculopathy at C6-7.<sup>31</sup>

¶ 24 On June 3, 2009, Chapman saw LaDonna Ladd-Maxwell, MS, APRN, on referral from Dr. Matury. Ladd-Maxwell saw Chapman for a number of ailments including neck and shoulder pain. Ladd-Maxwell noted tightness and tautness through the paravertebral muscles of the cervical spine down through the lumbar spine.<sup>32</sup>

¶ 25 On August 27, 2009, Chapman went to the Great Falls Clinic to seek treatment of her low-back pain. Benny E. Brandvold, M.D., examined Chapman. In addition to investigating Chapman's low-back pain, Dr. Brandvold also noted that Chapman had cervical disk disease with some radicular symptoms but no clinical myelopathy. He

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<sup>27</sup> Ex. 10 at 3.

<sup>28</sup> Ex. 5.

<sup>29</sup> Ex. 5 at 3.

<sup>30</sup> Ex. 5 at 11.

<sup>31</sup> Ex. 6 at 1-2.

<sup>32</sup> Ex. 8 at 1.



opined that it was possible she could respond to an anterior cervical discectomy and interbody fusion, but believed that her C4-5 disease and “unfavorable neck anatomy” lowered her chances of a successful surgical outcome.<sup>33</sup>

¶ 26 On December 10, 2009, Paul Johnson, M.D., saw Chapman and noted that she complained of chronic back and neck pain and that Chapman attributed recurrent left-sided cervical pain to her chair and ergonomic configuration at work. Dr. Johnson referred Chapman for evaluation of her chronic pain.<sup>34</sup> However, on December 30, 2009, Dr. Johnson noted that Chapman had not completed the chronic pain evaluation “secondary to financial issues.”<sup>35</sup>

¶ 27 On December 10, 2009, David W. Crossley, P.A., examined Chapman at the Northern Montana Medical Group for complaints of chronic neck and low-back pain. Chapman was seeking referral to a specialist since she had been unable to resolve her back conditions with the medical providers she had seen to date. Crossley noted that Chapman had an “extremely theatrical presentation” with her gait and Crossley’s examination largely revealed normal findings.<sup>36</sup> He stated:

At this point, I do not think there is anything we can offer the patient. She is trying to establish with someone who will accept care for her, provide refills of her medications and refer her for all of the studies that she wants to have done. . . . I informed her that I would not be accepting care for her . . . . There are some things that probably could help her, such as a subacromial injection, a trial of epidural steroids in the neck and the low back, physical therapy, intensive follow up, but I would not be supportive of chronic use of Percocet, which is her goal.<sup>37</sup>

¶ 28 Chapman was terminated from her employment with NEW on January 14, 2010.<sup>38</sup> At the time of her termination, Chapman’s job performance was deemed “below average” by her supervisor Gordon McGuire.<sup>39</sup> On NEW’s Personnel Action Request form, McGuire noted “unsatisfactory performance” as the reason for her termination.<sup>40</sup>

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<sup>33</sup> Ex. 14 at 22-24.

<sup>34</sup> Ex. 7 at 16.

<sup>35</sup> Ex. 13 at 18.

<sup>36</sup> Ex. 41 at 1-2

<sup>37</sup> Ex. 41 at 2.

<sup>38</sup> Ex. 36,

<sup>39</sup> Ex. 38 at 180-81.

<sup>40</sup> Ex. 38 at 170.

¶ 29 On March 22, 2010, Chapman underwent a Functional Capacity Evaluation (FCE) which concluded that she could safely tolerate working in a sedentary job position for 2 hours per day, 5 days per week.<sup>41</sup> The physical therapist noted that the history Chapman reported at the beginning of the FCE was:

Allison reports she originally injured her back in February 2008 in which she reports “all her thoracic and lumbar discs are bulging”. (No report available). She reports it was from repetitive keyboard use and answering the phone at work. . . .<sup>42</sup>

¶ 30 Cathy Gutowski, NEW’s human resources manager, testified at trial. I found Gutowski to be a credible witness. Gutowski testified that she did not directly supervise Chapman, but she would have been aware of any employment issues Chapman had. Gutowski testified that she did not recall Chapman raising any concerns about problems with her neck or arms interfering with her ability to perform her job duties. Gutowski further testified that she did not recall Chapman reporting any issues with one of NEW’s chairs. Gutowski stated that some of the chairs in service at NEW might have worn upholstery, but if a worker reported that a chair had mechanical problems or could not be adjusted properly, it would be removed from service.<sup>43</sup>

¶ 31 Gutowski testified that when new employees begin to work at NEW, they are instructed in ergonomics. She stated that all of the workstations are adjustable and workers are allowed to adjust their workstations however they like. Gutowski stated that at one time, Chapman did not want to change workstations because she was concerned about the configuration of the workstation and the lighting in the new location. Once she changed workstations, Chapman found a configuration that was acceptable with the new workstation, and she addressed the lighting situation by alternately wearing a visor or setting up an umbrella to diffuse the light.<sup>44</sup>

¶ 32 In *Chapman v. Twin City Fire Ins. Co.*,<sup>45</sup> Gutowski testified that Chapman’s termination on January 14, 2010, was unrelated to her industrial injury. Gutowski testified that the decision was made to terminate Chapman’s employment because Chapman was unable to consistently maintain the company’s standards. Gutowski also

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<sup>41</sup> Ex. 7 at 26-27.

<sup>42</sup> Ex. 7 at 35.

<sup>43</sup> Trial Test.

<sup>44</sup> Trial Test.

<sup>45</sup> 2010 MTWCC 30.

alleged that Chapman had lied during the course of a company investigation, and that Chapman was simply “not successful in our environment.”<sup>46</sup>

### CONCLUSIONS OF LAW

¶ 33 If a claimant files an occupational disease claim and remains in the allegedly injurious employment, the law in effect on the date she files the claim applies.<sup>47</sup> Since Chapman filed her claim in 2008, the 2007 statutes apply.

¶ 34 Chapman bears the burden of proving by a preponderance of the evidence that she is entitled to the benefits she seeks.<sup>48</sup>

¶ 35 Although the issue presented is whether Chapman suffered an injury or occupational disease, Chapman admits that there was no specific incident which triggered her symptoms. Therefore, this claim is properly categorized as an occupational disease claim.<sup>49</sup> An “occupational disease” is harm, damage, or death arising out of or contracted in the course and scope of employment caused by events occurring on more than a single day or work shift.<sup>50</sup> Causation is an essential element to an entitlement to benefits and the claimant has the burden of proving a causal connection by a preponderance of the evidence.<sup>51</sup>

¶ 36 As set forth in the findings above, Chapman contends that her employment at NEW caused her to suffer an aggravation or exacerbation of degenerative disk disease. The medical evidence in this case supports Chapman’s contention that she suffers from degenerative disk disease. However, aside from Chapman’s own opinion that her work conditions aggravated or exacerbated her condition, the only causal connection between her cervical condition is from the opinion letter of Angel Johnson, F.N.P., in which she stated that Chapman’s job duties “*may* aggravate” Chapman’s shoulder pain. Recently, in another case involving workstation ergonomics, I concluded that an occupational disease was compensable where the claimant’s treating physician opined that her injuries were “directly attributable to inadequate work station ergonomics” even though the treating physician did not specifically state that the claimant’s condition was

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<sup>46</sup> Trial Test.

<sup>47</sup> *Bouldin v. Liberty Northwest Ins. Co.*, 1997 MTWCC 8.

<sup>48</sup> *Ricks v. Teslow Consol.*, 162 Mont. 469, 512 P.2d 1304 (1973); *Dumont v. Wickens Bros. Constr. Co.*, 183 Mont. 190, 598 P.2d 1099 (1979).

<sup>49</sup> See §§ 39-71-116(20), -119, MCA.

<sup>50</sup> § 39-71-116(20), MCA.

<sup>51</sup> *Grenz v. Fire and Cas. of Conn.*, 250 Mont. 373, 380, 820 P.2d 742 (1991). (Citation omitted.)

a permanent aggravation of an underlying condition.<sup>52</sup> In Chapman's case, however, Johnson's opinion only indicates the possibility that Chapman's job duties aggravated her condition; nothing in Johnson's opinion letter indicates that she believed it was more probable than not that Chapman's job duties aggravated her underlying condition. Chapman has not offered any evidence that any medical provider has opined that it is more probable than not that her condition is work-related.

¶ 37 Therefore, I conclude that Chapman has not met her burden of proof regarding her occupational disease claim. Since Chapman is not the prevailing party, she is not entitled to payment of any indemnity or medical benefits on this claim, and is not entitled to a penalty award.

### MOTION FOR SANCTIONS

¶ 38 After trial concluded in this matter, Chapman filed a "Motion for Sanctions" against Twin City's counsel in which she argued that counsel "wasted the time and resources of the [C]ourt and everyone who was in attendance" because, she alleges, he failed to mount any kind of defense against her claim.<sup>53</sup> The burden of proving an entitlement to workers' compensation benefits is on the claimant; as set forth above, I concluded that Chapman did not meet her burden of proof. Chapman's Motion for Sanctions is without merit and is denied.

### JUDGMENT

¶ 39 Petitioner did not suffer an injury or occupational disease on the date alleged.

¶ 40 Petitioner is not entitled to payment of indemnity benefits.

¶ 41 Petitioner is not entitled to payment of medical benefits.

¶ 42 Petitioner is not entitled to a twenty percent penalty.

¶ 43 Petitioner's Motion for Sanctions is denied.

¶ 44 Pursuant to ARM 24.5.348(2), this Judgment is certified as final and, for purposes of appeal, shall be considered as a notice of entry of judgment.

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<sup>52</sup> *Mullaney v. Montana State Fund*, 2010 MTWCC 27, ¶¶ 42-43.

<sup>53</sup> Motion for Sanctions, Docket Item No. 25.

DATED in Helena, Montana, this 20<sup>th</sup> day of December, 2010.

(SEAL)

/s/ JAMES JEREMIAH SHEA  
JUDGE

c: Allison Chapman  
William O. Bronson  
Submitted: October 20, 2010 and November 8, 2010