BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F100372

LYLE FOUTS	CLAIMANT
CLOVERLEAF EXPRESS	RESPONDENT
COMMERCE & INDUSTRY INSURANCE COMPANY, INSURANCE CARRIER	RESPONDENT

OPINION FILED AUGUST 29, 2003

Before ADMINISTRATIVE LAW JUDGE MICHAEL L. ELLIG in Springdale, Washington County, Arkansas.

Claimant represented by KENNETH KIEKLAK, Attorney, Fayetteville, Arkansas.

Respondents represented by R. SCOTT MORGAN, Attorney, Pine Bluff, Arkansas.

STATEMENT OF CASE

A hearing was held in the above style claim on December 3, 2001 in Springdale, Arkansas. An Opinion was originally entered on February 20, 2002. This initial opinion held that the claimant failed to prove the existence of an employee-employer-carrier relationship at the time of his alleged injury on December 15, 2000. As a result, the claim was denied and dismissed. In its Opinion, dated September 11, 2002, the Full Commission reversed this finding and held that the claimant had proven the existence of an employee-employer relationship between the parties at the time of his alleged compensable injury. The Full Commission then remanded the matter for resolution of the remaining issues. The Full Commission's Opinion was appealed to the Arkansas Court of Appeals. This appeal was dismissed by the Court of Appeals on the basis that the Full Commission's Opinion did not constitute a final and appealable order. Pursuant to the Full Commission's Opinion, the remaining issues will now be addressed.

I

DISCUSSION

I. COMPENSATION RATES

The first issue is the appropriate weekly compensation rates for both total disability and permanent partial disability. The burden rests upon the claimant to prove the specific amount of his average weekly wage and the corresponding weekly compensation rates.

After consideration of the evidence presented, it is my opinion that the greater weight of the credible evidence proves that, at the time of the claimant's alleged compensable injury, he was earning wages sufficient to entitle him to the maximum compensation rates in effect at that time, or $394.00 for total disability and $296.00 for permanent partial disability.

In reaching this decision, I have relied upon the payment or settlement statements tendered by the claimant. These records show that during the entire period of his employment with this respondent, he earned a total of $10,727.55. The period of his employment with this respondent began in September of 2000 and continued through the date of his alleged compensable injury on December 15, 2000. When the total amount of wages he received is divided by the number of weeks required to earn these wages, this computation yields an average weekly wage of $708.42. An average weekly wage at this amount would entitle the claimant to the maximum weekly compensation rates in the effect at the time of his alleged compensable injury, which were $394.00 for total disability and $296.00 for permanent partial disability.

II. COMPENSABILITY

The central issue in this case is the question of whether the claimant sustained a

"compensable injury" on December 15, 2000. The burden rests upon the claimant to prove all of the elements necessary to establish this fact.

The claimant's alleged compensable injury was clearly cardiovascular in nature. Therefore, this issue is controlled by provisions of A.C.A. §11-9-114. This section states:

> "(a) a cardiovascular, coronary, pulmonary, respiratory, or cerebral vascular accident or myocardial infarction causing injury, illness, or death is a compensable injury only if, in relation to other factors contributing to the physical harm, an accident is the major cause of the physical harm.
>
> (b) (1) An injury or disease included subsection (a) of this section shall not be deemed to be compensable injury unless it is shown that the exertion of the work necessary to precipitate the disability or death was extraordinary and unusual in comparison to the employee's usual work in the course of the employee's regular employment or, alternatively, that some unusual and unpredicted incident occurred which is found to have been the major cause of the physical harm.
>
> (2) Stress, physical or mental, shall not be considered in determining whether the employee or claimant has met his burden of proof."

Thus, the claimant must prove the cardiac event, which occurred on December 15, 2000, meets all of the requirements set out in the foregoing section.

First, the claimant must prove that an "accident" was the "major cause" of the actual

"physical harm" that he sustained on December 15, 2000. The Act, itself, does not expressly define the term "accident." However, prior to the enactment of §11-9-114, the Supreme Court had defined the term "accident" as a specific incident, Stallings Brothers Feed Mill v. Stovall, 221 Ark. App. 541, 254 S. W. 2nd 460 (1953). Clearly, this definition would be consistent with the commonly accepted meaning of this term and would, therefore, comply with the Legislature's mandate of strict interpretation of all the provisions and terms of the Act.

The term "accident" is commonly interpreted as not only involving a specific incident (i.e. a single event or a limited sequence of events), but is also generally considered to require that this specific incident be unusual or unexpected. Clearly, such a definition would be compatible with subsection (b) of A.C.A. §11-9-114, which specifically requires that the "accident" precipitating disability or death must be "extraordinary and unusual in comparison in the employee's usual work in the course of the employee's regular employment, or alternatively, that some unusual and unpredicted incident occurred which is found to have been the major cause of the "physical harm."

The claimant contends that the cause of his cardiac event on December 15, 2000, was the physical exertion resulting from his participation in the lifting of a conveyor line, when attempting to place the line back on the customer's dock. The line had apparently fallen when he pulled his truck away from the dock before the line was removed from his truck.

Based upon the evidence presented, his participation in the lifting of this conveyor line would represent an "accident", as that term is used in the Act. This activity is sufficiently limited in scope and duration so as to constitute a "specific incident", as that

term would be generally defined. The evidence further shows that this specific incident was “extraordinary and unusual”, in comparison to the claimant’s usual work activities for this respondent. The claimant’s usual and customary work activities involved only the driving of a truck and did not involve any lifting or other activities involved in the loading or unloading of the cargo. The evidence in no way indicates that the claimant had ever previously been required, as an incident of his employment with this respondent, to assist in any heavy lifting.

Although the claimant’s participation in the lifting of this conveyor line was not a usual or customary activity required by his employment, his participation in this activity, on December 15, 2000, was clearly intended to further his employer’s interests. As shown by the evidence, Wal Mart was the respondent’s primary customer. The claimant had been expressly directed by the respondent to do anything reasonably necessary to keep this major customer satisfied with the respondent’s services. The falling of the conveyor line from the dock could be considered, at least in part, to be the fault of the claimant, as he had pulled the truck away from the dock, without making absolutely sure that the conveyor line had been removed. When his assistance in getting the conveyor line back onto the dock was requested by the Wal Mart personnel, the claimant was obviously attempting to follow the instructions of his employer to keep this customer “happy”. Thus, when the claimant engaged in this activity on December 15, 2000, he was performing employment services for the benefit of the respondent. Any injury that resulted from this activity would be considered to “arise out of and occur in the course of the claimant’s employment with this respondent”.

However, there remains the real area of dispute, that being whether this

employment related “accident” was the “major cause” (i.e. more than 50% of the cause) of the actual “physical harm”, which occurred on December 15, 2000. As previously noted, the burden rests upon the claimant to prove this fact by the greater weight of the credible evidence.

The medical evidence clearly shows that the initial “physical harm” experienced by the claimant, on December 15, 2000, took the form of a myocardial infarction involving the inferior wall of the left ventricle of his heart. This initial physical damage, in turn, resulted in ventricular fibrillation with ultimate cardiac arrest. These conditions then stopped the flow of oxygenated blood to the claimant’s brain, causing cerebral hypoxia and physical harm to his brain. In order for this physical harm to represent a “compensable injury” within the meaning of Ark. Code Ann. §11-9-114, exertion or effort, expended in the claimant’s attempt to assist in the lifting of the conveyor line, must be more than 50% of the cause of his initial inferior myocardial infarction on December 15, 2000.

Clearly, the claimant had longstanding cardiac difficulties. These difficulties had previously required a four-vessel bypass surgery in October of 1991. Following this bypass surgery, the claimant had continued to experience frequent episodes of angina, requiring nitroglycerin. He also suffered from hypertension and high cholesterol. A cardiac catheter study, performed on January 8, 2001, revealed a 100% occlusion of his right main coronary artery, a 75% occlusion of his left main coronary artery, a 90% occlusion of the first obtuse marginal artery, and a 100% occlusion of the second obtuse marginal artery. The only functional graft remaining from the previous four-vessel bypass, was a left internal mammary graft, to the LAD (left anterior descending artery). Obviously, such extensive arthrosclerotic blockage occurred over and extended period of time. However, the mere

presence of these extensive pre-existing conditions does not in and of themselves, prevent the claimant's infarction and ancillary damage from being compensable. Employment related aggravations and pre-existing conditions can still represent "compensable injuries", even under the provisions of Ark. Code Ann. §11-9-114.

The only expert medical opinion, concerning the existence of a causal relationship between the exertion required by the lifting the conveyor line on December 15, 2000, and his myocardial infarction, on that same date, is that of Dr. Michael D. Green. Dr. Green is a highly competent cardiologist and is apparently the claimant's current treating physician for his cardiac difficulties. In a report to claimant's attorney, dated August 7, 2001, Dr. Green states:

> "In conclusion, I would say that considering his risk factors and known coronary artery disease that while the patient was completing his job at the time, i.e. lifting a conveyor belt, this put an enormous strain on his heart at the same time that it was not getting adequate blood flow. If one was to look at this from a percentage standpoint, I would state that it was easily greater than a 50% major cause for his injury (myocardial infarction with resulting ventricular fibrillation and cerebral hypoxia)."

In order to be appropriately considered, expert medical opinion on causation must be stated "within a reasonable degree of medical certainty", Ark. Code Ann. §11-9-102(16)(B). In this regard, the opinion of Dr. Green is stated with clarity and conviction. He is well qualified in the area of medicine involved in formulating such an opinion. There is no indication that Dr. Green formed this opinion without sufficient knowledge of the facts necessary to arrive at a knowledgeable or informed opinion or that his opinion is in any way based upon a mistake of material facts necessary to make an informed opinion on this

issue. There is also no evidence that Dr. Green is in any way bias or lacking in credibility.

After consideration of all the evidence presented, I find that the expert medical opinion of Dr. Green, on the issue of a potential causal relationship between the claimant's employment activities on December 15, 2000, and his cardiac difficulties, on that same date, to be credible and convincing. I, therefore, find that the claimant has proven by the greater weight of the evidence that this employment related "accident", on December 15, 2000, was the "major cause" of his initial cardiac difficulties on that date and the resulting physical harm, in the form of an inferior myocardial infarction of the left ventricle, the subsequent ventricular fibrillations, and the ultimate cerebral hypoxia.

In summary, the claimant has proven by the greater weight of the credible evidence that on December 15, 2000, he sustained a "compensable injury" to his cardiovascular and cerebrovascular systems within the meaning of Ark. Code Ann. §11-9-114. Therefore, he would be entitled to appropriate benefits under the Act for this compensable injury.

III. BENEFITS

Clearly, the claimant would be entitled to reasonably necessary medical services for his compensable injury at the respondent's expense, Ark. Code Ann. §11-9-508. In order to constitute "reasonably necessary medical services" the medical services must be necessitated by or connected with the compensable injury and, at the time the services are rendered, have a reasonable expectation of accomplishing the purpose for which they are intended.

In the present case, the claimant's compensable injury began as a myocardial

infarction involving the inferior wall of the left ventricle. This in turn resulted in ventricular fibrillations, which progressed to cardiac arrest. These ventricular fibrillations and cardiac arrest in turn produced cerebral hypoxia, due to the failure of his heart to supply oxygenated blood to his brain. Therefore, any appropriate medical services necessary to accurately diagnose the nature and extent of all of these conditions and to alleviate or reduce the physical damage that each has caused would constitute "reasonably necessary medical services" for the claimant's compensable injury.

After consideration of all the evidence presented, it is my opinion that the greater weight of this evidence proves that the medical services provided to the claimant for these difficulties by the initial emergency medical technicians, by the personnel at the Magnolia Regional Health Center, by and at the direction of Dr. Margaret Ellis (the claimant's family physician), by and at the direction of Dr. Michael Green, and by and at the direction of Dr. David Davis, all represent reasonably necessary medical services for the claimant's compensable injuries within the meaning of Ark. Code Ann. §11-9-508. Pursuant to the provisions of this subsection, the respondents are liable for the expense of these services, subject to the medical fee schedule established by this Commission.

The next dispute involves the claimant's entitlement to temporary total disability benefits. Again, the burden is on the claimant to prove his entitlement to such benefits. In order to meet this burden, the claimant must prove, by the greater weight of the credible evidence, that he continued within his healing period from the effects of his compensable injury and also continued to be rendered totally disabled from performing all forms of regular gainful employment, as a result of this injury.

In the present case, the evidence shows that the compensable injury produced

significant damage to the inferior wall of the claimant's left ventricle, as well as at least temporary damage to his brain. The evidence presented further proves that this damage has resulted in substantial loss of both physical and mental abilities. These limitations are sufficient to prevent the claimant from performing regular gainful employment from the time of the injury, on December 15, 2000 through a date yet to be determined, but no earlier than the date of the hearing on December 3, 2001.

The issue of the duration of the healing period is a medical question, which must be resolved on the basis of the greater weight of the medical evidence presented. The healing period continues until the claimant has achieved the maximum benefit of time and medical treatment in the resolution or stabilization of the actual physical damage produced by the compensable injury.

In the present case, the medical evidence clearly shows that the claimant continued under continuous active medical treatment, which was intended to improve or at least stabilize the actual physical damage caused by the compensable injury, from the date of the injury through, at least, the date of the hearing on December 3, 2001.

Thus, I find that the claimant has proven by the greater weight of the credible evidence that his compensable injury of December 15, 2000, rendered him temporarily totally disabled from performing all forms of regular gainful employment for which he is otherwise qualified from the date of that injury through a date yet to be determined, but no earlier than the date of the hearing on December 3, 2001. The claimant would be entitled to appropriate weekly compensation benefits during this period of temporary total disability.

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of this

claim.

2. On December 15, 2000, the relationship of employee-employer-carrier existed between the parties.

3. On December 15, 2000, the claimant earned wages sufficient to entitle him to weekly compensation benefits of $394.00 for total disability and $296.00 for permanent partial disability.

4. On December 15, 2000, the claimant sustained a compensable cardiovascular and cerebrovascular injury, within the meaning of Ark. Code Ann. §11-9-114. Specifically, the claimant has proven by the greater weight of the credible evidence that on December 15, 2000, he was involved in a specific employment related accident that was the major cause of the physical harm to his heart and brain and that this employment related accident took the form of physical exertion that was extraordinary and unusual in comparison to the claimant's usual work in the course of the claimant's regular employment with the respondent.

5. The medical services provided the claimant for his compensable coronary and cerebral difficulties by and at the direction of the initial emergency medical personnel, by and at the direction of medical personnel at the Magnolia Regional Health Center, by and at the direction of Dr. Margaret Ellis, by and at the direction of Dr. Michael D. Green, and by and at the direction of Dr. David A. Davis constitute reasonably necessary medical services within the meaning of Ark. Code Ann. §11-9-508. Pursuant to the provisions of this section, the respondents are liable for the expense of these

services, subject to the medical fee schedule established by this Commission.

6. The claimant has been rendered temporarily totally disabled as a result of his compensable injury for the period beginning December 16, 2000 and continuing until a date yet to be determined, but at least through the date of hearing on December 3, 2001.

7. The respondents have denied the occurrence of any compensable injury on December 15, 2000, and have controverted the claimant's entitlement to any and all benefits.

8. A reasonable fee for the claimant's attorney is the maximum statutory attorney's fee on all benefits herein and hereinafter awarded.

ORDER

______The respondents shall pay to the claimant temporary total disability benefits for the period beginning December 16, 2000 and continuing through a date yet to be determined, but at least through the date of hearing on December 3, 2001.

The respondents shall be liable for the expenses incurred as a result of medical services provided to the claimant for his compensable injury by and at the direction of the initial emergency medical personnel, by and at the direction of medical personnel at the Magnolia Regional Health center, by and at the direction Dr. Margarete Ellis, by and at the direction of Dr. Michael Green, and by and at the direction of Dr. David A. Davis. This liability shall be subject to the medical fee schedule established by this Commission.

The respondents shall pay to the claimant's attorney the maximum statutory attorney's fee on all benefits herein awarded. One-half of this fee is the obligation of the

respondents in addition to such benefits. The remaining one-half of this fee is to be withheld by the respondents from benefits herein awarded directly to the claimant.

All benefits herein awarded, which have heretofore accrued, are payable in a lump sum without a discount.

This award shall bear the maximum legal rate of inters until paid.

IT IS SO ORDERED.

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MICHAEL L. ELLIG
ADMINISTRATIVE LAW JUDGE