

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F212669

JERRY SLOAN, EMPLOYEE

CLAIMANT

**J & E LITTER COMPANY,
UNINSURED EMPLOYER**

RESPONDENT

OPINION FILED JULY 18, 2003

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on June 20, 2003, at Hope, Hempstead County, Arkansas.

Claimant represented by the HONORABLE JOSEPH P. GRAHAM, Attorney at Law, Prescott, Arkansas.

Respondents represented by the HONORABLE JOE C. SHORT, Attorney at Law, Hope, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted in the above-styled claim to determine the claimant's entitlement to workers' compensation benefits. On April 8, 2003, a prehearing conference was conducted in this claim, from which a prehearing order of April 9, 2003, was filed. The prehearing order reflects the issues to be addressed during the course of the hearing, and the parties' respective contentions relative to the issues. The prehearing order is herein designated a part of the record as the Commission Exhibit No. 1. The parties stipulated that the employment relationship existed on June 27, 2001.

The testimony of Jerry Sloan, the claimant, and Marlyn Swinney, coupled with medical reports and other documents comprise the record in this claim.

DISCUSSION

Jerry Michael Sloan, the claimant, with a date of birth of August 29, 1950, is a high school graduate with several years of post secondary education. The claimant commenced his employment

with respondent as a truck driver on or about June 27, 2001.

Marlyn Swinney, the sole owner of J & E Litter Company, testified regarding the nature of his business operation:

We haul bedding materials for like Pilgrim's, Tyson's, to go in the chicken houses, to put baby chicks on. (T. 51)

Mr. Swinney acknowledged that on June 27, 2001, he had three trucks in operation and that each truck had a driver, to include the claimant. In addition to the drivers, the testimony in the record reflects that the respondent employed several other individuals during the pertinent time period, to include Randy Cox, a mechanic, Brenda, an office personnel, and Gary, who ran a litter truck. Respondent did not have a policy of workers' compensation in place during the pertinent time period. Further, there is no evidence in the record to reflect that respondent was an authorized self-insured employer pursuant to the provisions and rules of the Arkansas Workers' Compensation Commission at the time of the instant claim.

The claimant's testimony reflects that his average weekly wage in the employment of respondent was \$450.00. The claimant noted that while he became a full time employee of respondent on or about June 27, 2001, he had previously worked for respondent when the respondent's other drivers were on vacation or respondent needed additional help. When employed by respondent as a full time employee the claimant was assigned a specific truck to drive. The claimant testified that the air conditioning in the truck that he was furnished by respondent did not work. The claimant added that he and the respondent had talked about the malfunctioning air conditioner and that respondent had related that he was going to get it fixed.

The claimant maintains that he suffered an injury arising out of and in the course of his

employment with respondent on June 27, 2001. Specifically, the claimant attributes his diagnosis of heat exhaustion to his employment duties with respondent while driving the truck without air conditioning at a time the temperature exceeded 90°.

The claimant's testimony reflects that on June 27, 2001, he got out of bed at 4:30 a.m., ate breakfast, got in his truck, and proceeded to Hixson Lumber Company in Magnolia, Arkansas. Upon arriving at Hixson Lumber Company, the claimant dropped the empty trailer and picked up a full trailer. The claimant acknowledged that in changing out the empty trailer for the full trailer he proceeded with the normal procedures performed as a truck driver to include getting out of the truck, unhooking the air lines, pulling the pin off the fifth wheel, cranking the dolly down, getting back in the truck and pulling out from underneath the trailer. The process was repeated in reverse order in terms of hooking onto the loaded trailer. The claimant acknowledged that while the afore activities were fairly physical, it was not unusual and was a part of his normal routine as a truck driver.

The claimant estimated that he departed from the Hixson Lumber Company site in Magnolia, Arkansas, at approximately 9:00 a.m. Thereafter, the claimant proceeded to Willamette Company in Junction City, Louisiana. The claimant estimated that it took approximately an hour and a half to arrive at Willamette. The claimant noted that there were several vehicles ahead of him waiting to be unloaded at the time of his arrival and that he waited in line for his turn to be unloaded. The claimant's testimony reflects that it took him fifteen to twenty minutes to unload once he pulled into the unloader. With respect to the unloading at Willamette, the claimant's testimony reflects:

I pulled onto their unloader – they have a loader there, an unloader and a loader there that raises the trailer up and dumps it out into their bin, so I had to disconnect the tractor from the trailer and wait for them to empty it out. Then I had to go back and hook back up to the

trailer before I could get my paperwork off of that load and leave. (T. 15)

Once the claimant completed unloading at Willamette, in Junction City Louisiana, he was done for the day and was proceeding back to Hope, Arkansas. The claimant's testimony reflects, with respect to his return route to Hope:

Well, I had gotten back up onto the loop that goes around El Dorado and I was just driving up through there when I felt a little queasy and I started trying to get off the road but before I could do that I was – I had lost consciousness.

* * *

I went across the median into the on-coming traffic, then across that lane up a 30 foot embankment and then the tractor ran out of power and jack-knifed back into the trailer. (T. 16)

The testimony in the record reflects that an Arkansas state trooper was dispatched to the location of the accident. The claimant testified:

Well, initially when I regained consciousness I got out of the truck to see what was wrong, if it was tore up or, you know, what I needed to do. I met with Officer Hust outside on the shoulder of the road and the ambulance fellows got there and they wanted to look me over, take my blood pressure, heart rate, whatever, that sort of thing. I felt relatively well other than just hot and queasy still. They asked me if I wanted to go to the hospital and I said that I didn't think I really needed to, that I thought I had just got hot and passed out from the heat. So I signed the papers that released them from their duties and they went on. Officer Hust asked me to join him in the car, which I did, and while we were sitting there I turned to him and I told him, I said, I think I'm going to pass out again, at which time I did pass out and he observed whatever it was for 15 or 20 seconds I guess, and then I regained

consciousness. He called the ambulance that had been there and they came back and picked me up and took me to the hospital. (T. 17)

The medical in the record reflects that the claimant was transported to the emergency room of the Medical Center of South Arkansas, in El Dorado, Arkansas, on June 27, 2001. After receiving initial emergency medical treatment, the claimant was admitted to the hospital where he underwent additional diagnostic studies. The claimant was discharged from the Medical Center of South Arkansas on June 29, 2001. The claimant's testimony reflects that he was seen by Dr. Shailesh Vora, an El Dorado neurologist, while admitted to the hospital and that an appointment was scheduled for him with Dr. Vora at the time of his discharge.

The claimant's testimony reflects that after his discharge from the Medical Center of South Arkansas, he did follow-up in treatment with Dr. Vora on one occasion. The claimant maintains that Dr. Vora diagnosed his complaint as a seizure disorder. Further, the claimant's testimony reflects that Dr. Vora increased the medication which had been furnished by the medical providers at Medical Center of South Arkansas at the time he was seen by same. The medication was noted to be Dilantin. The claimant maintains that once he acquired information regarding the side affects of the Dilantin he again consulted Dr. Vora and advised him that he would be seeking a second opinion.

The claimant was seen by Dr. Dale E. Goins, a Hope general practitioner and Laura Wreyford, a nurse practitioner, for a second opinion relative to the June 27, 2001 incident. Dr. Goins in turn referred the claimant to Dr. James W. Schmidley, vice chairman of the Department of Neurology at UAMS. The claimant underwent a number of diagnostic studies while under Dr. Schmidley's care and treatment.

The claimant acknowledged that Dr. Goins and Ms. Wreyford did not examine him between

the June 27, 2001 incident and August 9, 2001. He was, however, examined by nurse practitioner Wreyford on August 9, 2001 and found to be in general good health. As a consequence of the afore, the restriction on the claimant's driving ability was removed and claimant was able to return to his livelihood as a truck driver.

The claimant asserts that he is entitled to the payment of temporary total disability benefits from June 27, 2001 through August 9, 2001. Additionally, the claimant maintains that the respondent is liable for medical treatment incurred relative to the June 27, 2001 incident.

While the claimant maintains that he suffered a cut to his ear in the June 27, 2001 accident, he acknowledged that he had not received medical treatment relative to same. Further, the claimant acknowledged that the medical reports are devoid of any reference to a cut or laceration having been sustained in the June 27, 2001 incident. Further, the claimant acknowledged that in 1974 or 1976 he was involved in a serious motor vehicle accident wherein he remained in a coma for up to six weeks, and that he suffered a brain injury in the 1974 incident. Further, the claimant acknowledged that he related to Dr. Schmidley that he had suffered a previous incident of passing out prior to the June 27, 2001 incident. The claimant attributed the prior incident to an instance of raising up too fast.

While the claimant estimated there was approximately 10 to 20 minutes between the time that the ambulance left the scene of the accident on June 27, 2001 following the motor vehicle accident after he declined medical treatment and the point in time it returned after he had again lost consciousness while in the vehicle of the state trooper, he acknowledged that the time documented in reports generated relative to same reflected a substantially more time had elapsed. Specifically, the initial accident report noted that emergency medical personnel arrived at the scene of the accident

at approximately 11:46 a.m. It was at that time the claimant declined medical treatment and, after signing a waiver, the ambulance departed. The claimant thereafter sat in the vehicle of the state trooper, whose vehicle engine was running and the air conditioning was on. While in the vehicle, the claimant again lost consciousness. As a consequence of the afore the ambulance was again dispatched to the accident scene, and the claimant did in fact agree to be transported to Medical Center of South Arkansas for treatment. The incident report reflects that the paramedics were dispatched by the Union County Sheriff Office at 12:46 p.m. and arrived at the scene at 12:48 p.m. Thereafter, the paramedics, after examining the claimant, transported him to the Medical Center of South Arkansas and arrived at 1:20 p.m. (CX 2)

After a thorough consideration of all the evidence in this record, I make the following:

FINDINGS

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim. During the pertinent time period respondent employed the requisite number of employees to bring its operation within the jurisdiction of the Commission, however, did not have a policy of workers' compensation insurance in place nor was it an authorized self-insured employer.
2. On June 27, 2001 the relationship of employee-employer existed among the parties.
3. On June 27, 2001 the claimant earned wages sufficient to entitle him to weekly compensation benefits of \$300.00/\$225.00 for temporary total disability/permanent partial disability benefits.
4. On June 27, 2001 the claimant did not sustain an injury arising out of and in the course of his employment.

CONCLUSIONS

The present claim is one of compensability. The claimant asserts that he suffered a compensable injury within the course and scope of his employment on June 27, 2001. As a result of the injury he was totally incapacitated from engaging in gainful employment from June 27, 2001 through August 9, 2001. The claimant asserts entitlement to temporary total disability benefits during the afore period. Additionally, the claimant maintains that medical treatment rendered on his behalf relative to the June 27, 2001 incident, was reasonably necessary and related to the compensable injury for which respondent is liable. The respondent denies that the claimant suffered a compensable injury under the Arkansas Workers' Compensation statutes, on June 27, 2001, and controverts the claim in its entirety.

At the outset, the evidence clearly discloses that on June 27, 2001, the claimant was an employee of respondent. Further, the evidence preponderates that the respondent employed the requisite number of employees to bring its operation within the purview of the Arkansas Workers' Compensation statute and jurisdiction of the Arkansas Workers' Compensation Commission. Respondent did not have in place a policy of workers' compensation insurance on June 27, 2001 nor was respondent an authorized approved self-insured employer pursuant to the rules of the Arkansas Workers' Compensation Commission. Respondent is liable for the costs of the proceeding before the Arkansas Workers' Compensation Commission in that the Arkansas Workers' Compensation Commission has jurisdiction of this claim.

The present claim is one governed by the provisions of Act 796 of 1993, in that claimant asserts entitlement to workers' compensation benefits as a result of an injury having been sustained subsequent to the effective date of afore provision. Specifically, the claimant asserts that the June 27, 2001 incident has been diagnosed as heat exhaustion and that respondent is liable for the

payment of workers' compensation benefits relative to same.

The evidence preponderates that prior to June 27, 2001, the claimant has suffered an episode of brief loss of consciousness when he stood up from a squatting position. The claimant related to Dr. James W. Schmidley, vice chairman of the Department of Neurology at UAMS, to whom he had been referred by Dr. Dale Goins:

About a month before he had a brief episode of loss of consciousness when he stood up from the squatting position. Again, this was witnessed, and very brief. Witnesses did not describe seizure activity of any sort, the patient remembers no specific prodrome beyond the feeling of queasiness before any of these spells. Specifically, there is nothing to suggest a distinctive set of cognitive, emotional or psychic symptoms before these events. In the late 60's and early 70's, he had palpitations while he was in the service. These consisted of regular runs of tachycardia, which he could terminate with a Valsalva maneuver. They were not related to exercise. (JX1, p. 36)

Dr. Schmidley, who had access to claimant's prior medical records, noted in his July 12, 2001, report:

Impression - This is a healthy middle-aged gentleman who had a motor vehicle accident many years ago that caused left temporal and frontal encephalomalacia. Despite this, I do not think his current episodes are seizures. They are much more likely cardiac in etiology. (JX1, p. 36)

As previously noted, the claimant was seen on June 27, 2001, at the emergency room of the Medical Center of South Arkansas. (JX1, p. 1-7) The claimant was admitted to the Medical Center of South Arkansas where he came under the care and treatment of Dr. Shailesh Vora, an El Dorado neurologist, to whom he had been referred by Dr. Hazem Zufari. Dr. Vora's assessment of the

claimant's complaint was that of episodes of syncope most likely generalized tonic/colonic seizures. At the time the claimant was discharged from the Medical Center of South Arkansas it was with a diagnosis of seizure disorder. The claimant was directed to follow-up with Dr. Vora and not to operate mechanical equipment until seen in follow-up by Dr. Vora. Further, the claimant was provided Dilantin at the time of his June 29, 2001 discharge from the Medical Center of South Arkansas. (JX1, p. 26-28)

In addition to being directed to follow-up with Dr. Vora, the claimant was also directed to be seen by Dr. Gary J. Collins, at Arkansas Cardiology, in El Dorado, Arkansas. The claimant did in fact follow-up with Dr. Collins and thereafter was seen by Dr. Vora. (JX1, p. 32)

The medical in the record reflects that the claimant was seen by Dr. Vora on July 5, 2001, and thereafter discharged from the care of same per claimant's request. The July 5, 2001 report of Dr. Vora reflects an assessment of syncope. R/O generalized tonic clonic seizure, cardiac arrhythmia, heatstroke, vasovagal syncope, other etiologies. (JX 1, p. 33)

As previously noted, the claimant did obtain a referral to Dr. Schmidley from Dr. Dale Goins. The July 12, 2001 report of Dr. Schmidley reflects the results of his evaluation of claimant. As previously noted, Dr. Schmidley's impression of the claimant's complaint that it was much more likely cardiac in etiology.

As previously noted the claimant was not examined by either Dr. Goins or nurse practitioner Laura Wreyford between June 27, 2001 and August 9, 2001. A July 27, 2001 report authored by the afore provider relative to the claimant does reflect they had access to the diagnostic studies performed relative to the claimant. Reciting the results of the various diagnostic studies, the July 27, 2001 report concludes, "probable cause of syncope episode is heat exhaustion." (JX 1. p. 41)

The claimant acknowledged that he had not engaged in any unusual or out of the ordinary employment activities on June 27, 2001, relative to his employment with respondent. Additionally, the claimant's testimony reflects that as he drove the vehicle on June 27, 2001, from the Willamette plant in Junction City, Louisiana, in his return trip to Hope, Arkansas, he had the windows down and air was circulating in the vehicle. The air conditioner did not work in the claimant's truck. Further, the claimant's testimony reflects that after his first episode of loss of consciousness on June 27, 2001, he was sitting in the vehicle of the Arkansas state trooper with the motor running and the air conditioner on when he suffered his second episode of loss of consciousness. The claimant's testimony reflects that both episodes were preceded by a feeling of queasiness. Further, the evidence reflects that prior to the June 27, 2001 incident, the claimant had suffered an incident or episode of loss of consciousness when rising from a squatting position, which was also preceded by a queasy feeling.

Arkansas Code Annotated §11-9-114 provides, in pertinent part:

- (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 in subsection (a) of this section shall not be deemed to be a 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.

In the instant claim it is clear that the diagnosis on the claimant's June 27, 2001 syncopic episode has not been identified. While the claimant attributes the incident to operating a vehicle with a non functioning air conditioner in extremely hot temperature, the evidence preponderates that claimant suffered an episode prior to his employment with respondent. Further, at the time of the June 27, 2001 incident, the claimant was operating a vehicle, with the windows down, and air circulating in same. Finally, when the claimant suffered a second episode on June 27, 2001, he was sitting in the Arkansas state trooper's vehicle with the air conditioning engaged.

The claimant has failed to sustain his burden of proof by a preponderance of the evidence that he sustained an injury arising out of and in the course of his employment with respondent.

This claim is respectfully denied and dismissed.

IT IS SO ORDERED.

ANDREW L. BLOOD
Administrative Law Judge