

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F306032

JOEL WADE, Employee	CLAIMANT
CANNON EXPRESS, Employer	RESPONDENT
RISK MANAGEMENT RESOURCES, Carrier	RESPONDENT

OPINION FILED OCTOBER 31, 2003

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Springdale, Washington County, Arkansas.

Claimant represented by JAY TOLLEY, Attorney, Fayetteville, Arkansas.

Respondents represented by CONSTANCE G. CLARK, Attorney, Fayetteville, Arkansas.

STATEMENT OF THE CASE

On October 1, 2003, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on July 23, 2003, and a pre-hearing order was filed on that same date. A copy of the pre-hearing order has been marked Commission's Exhibit #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 the within claim.
2. Claimant was employed by respondent on May 29, 2002.

Subsequent to the hearing the parties agreed to stipulate that claimant earned an average weekly wage which would entitle him to the maximum compensation rate should his claim be found compensable.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Whether chest pain and shortness of breath on May 29, 2002 was a compensable injury.
2. Temporary total disability benefits.

3. Medical.
4. Attorney fee.

Claimant contends that he suffered a compensable injury in the form of sharp pain in his chest and arm and shortness of breath on May 30, 2002.

The respondents contend that any medical problems from which the claimant suffered on or about May 30, 2002 did not arise out of or in the course of his employment with the respondent and therefore do not constitute a compensable accidental injury.

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 witness and to observe his 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 July 23, 2003, and contained in a pre-hearing order filed that same date, are hereby accepted as fact.

2. The parties' stipulation that claimant earned a sufficient average weekly wage to entitle him to compensation at the maximum compensation rate for 2002 is also hereby accepted as fact.

3. Claimant has failed to prove by a preponderance of the evidence that he suffered a compensable injury in the form of chest pain and/or shortness of breath while employed by the respondent.

FACTUAL BACKGROUND

_____The claimant is a resident of Miamisburg, Ohio who went to work for the respondent as an over-the-road truck driver in February 2002. On May 30, 2002, the claimant had

picked up a load in Indiana for delivery in Pennsylvania. As claimant was driving down the interstate in Clarion, Pennsylvania, he developed various symptoms including shortness of breath, pain in his left shoulder, and chest pain. Thinking that he might be suffering a heart attack, the claimant pulled off the road and contacted the respondent by cell phone.

Emergency personnel were contacted and claimant was taken by ambulance to the emergency room at the hospital in Clarion, Pennsylvania. After treatment at the emergency room claimant went back to his truck and drove for one to two hours before stopping to sleep. Upon awakening, the claimant drove to his home in Ohio and sought additional medical treatment from his family physician, Dr. Agarwal on June 3, 2002. Claimant was also evaluated by Dr. Agarwal on June 14, 2002.

Claimant has filed this claim contending that he suffered a compensable injury in the form of chest pain and shortness of breath while working for respondent on May 30, 2002. Claimant seeks payment of temporary total disability benefits, medical benefits, and a controverted attorney fee.

ADJUDICATION

The initial issue for consideration involves the correct burden of proof for compensability in this case. Given claimant's contention that he suffered chest pain and shortness of breath on May 30, 2002, it could be argued that claimant's claim for compensation benefits is governed by the provisions set forth in A.C.A. §11-9-114 which cover cardiovascular, coronary, pulmonary, respiratory, or cerebrovascular accidents. On the other hand, given some of the diagnoses contained in the medical records, it might also be argued that a portion of claimant's complaints would be governed by the burden of proof regarding specific injuries identifiable by time and place of occurrence.

Under the facts presented in this case, the issue of whether one or both burdens of proof apply is irrelevant since under either burden of proof claimant has the burden of

proving by a preponderance of the evidence that a causal connection exists between his injury and his employment.

For an injury to be compensable under Arkansas Workers' Compensation law, it must result from an injury "arising out of and in the course of employment." A.C.A. §11-9-401. An injury occurs "in the course of employment" when it occurs "within the time and space boundaries of the employment, while the employee is carrying out the employer's purpose, or advancing the employer's interest either directly or indirectly." *City of El Dorado v. Sartor*, 21 Ark. App. 143, 729 S.W. 2d 430 (1987). The phrase "arising out of the employment" refers to the origin or cause of the accident, so it must be shown that a causal connection exists between the injury and the employment. *Gerber Products v. McDonald*, 15 Ark. App. 226, 691 S.W. 2d 879 (1985). In order for an injury to arise out of employment, it must be a natural or probable consequence or incident of the employment and a natural result of one of its risks. *J & G Cabinets v. Hennington*, 269 Ark. 789, 600 S.W. 2d 916 (Ark. App. 1980).

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has failed to prove by a preponderance of the evidence that a causal connection exists between his injury and his employment with respondent. Claimant has not shown that his injury was the natural or probable consequence of his employment or a natural result of one of its risks.

As previously noted, claimant initially sought medical treatment from the emergency room in Clarion, Pennsylvania. The medical reports from that visit indicate that claimant gave a history of fever and chills associated with the flu since Saturday, May 25, 2002. Claimant was released from the emergency room after receiving medication. The diagnosis of the emergency room was (1) costochondritis, (2) non-cardiac chest pain, and (3) bronchitis. According to the *Attorney's Dictionary of Medicine*, chondritis is the inflammation of cartilage linking the rib and the breast bone.

Upon his return to his home in Ohio, claimant sought medical treatment from Dr. Agarwal on June 3, 2002. My review of Dr. Agarwal's medical report from that date reveals that a large portion of it is illegible. However, it does appear that Dr. Agarwal diagnosed claimant as suffering from several conditions, including chest pain of a musculo-skeletal nature and left shoulder tendinitis.

When claimant next returned to Dr. Agarwal on June 14, 2002, Dr. Agarwal also diagnosed claimant as suffering from depression/anxiety and possible sleep apnea for which he recommended a sleep study.

In short, as a result of claimant's visit to the emergency room on March 30, 2002 and his subsequent visits with Dr. Agarwal in June 2002, claimant has been diagnosed as suffering from several possible conditions. These include costochondritis, non-cardiac chest pain, bronchitis, musculo-skeletal chest pain, left shoulder tendinitis, depression/anxiety, and possible sleep apnea. According to claimant's testimony, he was performing his normal job duties driving his truck down the interstate when his symptoms began. I find that claimant has offered insufficient credible evidence indicating that a causal connection exists between any of these conditions and his employment with the respondent. There is no evidence that any of these conditions are the natural or probable consequence of his employment or a natural result of one of its risks. The mere fact that claimant was driving his truck at the time his symptoms began is not sufficient in and of itself to prove a causal connection.

Having failed to prove a causal connection between any of these conditions and his employment with the respondent, claimant has failed to prove by a preponderance of the evidence that he suffered a compensable injury.

ORDER

Claimant has failed to prove by a preponderance of the evidence that he suffered

a compensable injury while working for the respondent. Therefore, his claim for compensation benefits is hereby denied and dismissed.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE