

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F304230**

<b>ERVIN JAMES BEVERLY, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>DREW COTTONSEED OIL MILL, INC., EMPLOYER</b>	<b>RESPONDENT</b>
<b>COMMERCE &amp; INDUSTRY INSURANCE CO./ AIG CLAIM SERVICES (TPA), INSURANCE CARRIER</b>	<b>RESPONDENT</b>

**OPINION FILED APRIL 16, 2004**

Hearing before Administrative Law Judge Dail Stiles on March 25, 2004, in Little Rock, Pulaski County, Arkansas.

Claimant appeared Pro Se.

Respondents represented by Mr. R. Scott Morgan, Attorney at Law, Pine Bluff, Arkansas.

A hearing was held on March 25, 2004, to determine the compensability of the claim filed herein.

It was stipulated that the claimant sustained a compensable injury on March 22, 2003, and that his earnings were sufficient to entitle him to a temporary total disability benefit of \$258.00 a week.

It was further stipulated that one check in the amount of \$480.00 representing temporary total disability benefits was paid to the claimant along with some initial medical benefits.

The claimant contends that as a result of a traumatic injury to his head on March 22, 2003, he aggravated a tumor on his cervical spine. The claimant contends he is entitled to medical benefits associated with the removal of that tumor.

The respondents controvert any benefits associated with the tumor and removal of same contending that there is no causal relationship between the

tumor and its removal and the claimant's work activity or compensable injury of March 22, 2003.

### **STATEMENT OF THE CASE**

While working for the respondent employer on March 22, 2003, the claimant was struck on the top of the head by a foam log which he described as being 196 feet tall and 50 inches wide and weighing anywhere from 125 to 800 pounds. The claimant said that a log fell from behind striking him on the top of the head and knocking him unconscious.

The claimant sought medical treatment and came under the treatment of Dr. P. B. Simpson, a neurosurgeon in Pine Bluff.

Through some diagnostic testing, including an MRI and/or a CT scan, it was discovered that the claimant had a, "meningioma at the posterior aspect of his foramen magnum, impinging the left posterior lateral aspect of his cord." In an April 28, 2003 clinic note, Dr. Simpson stated under the Impression section of that report, the following:

I think he has a meningioma of his left C1 area, and he is going to need to have this removed. Certainly this was not caused by the accident, but this is a pre-existing lesion that may have been aggravated by the accident.

Dr. Simpson subsequently removed the tumor from the claimant's cervical spine.

The claimant's medical records were sent to Dr. Scott Schlesinger, a neurosurgeon in Little Rock, for review, and on March 16, 2004, Dr. Schlesinger stated in a letter to the respondents' attorney, in part:

. . . I do not believe in any way that the accident made the tumor become symptomatic. In fact, it is unclear that the tumor was even symptomatic at all. He may have simply had a musculoskeletal injury and the tumor was discovered by accident. In fact, I believe this was probably the case. . . .

The deposition of Tommy Deshazer, a co-employee, was taken on March 17, 2003, and introduced into evidence.

Mr. Deshazer said that he worked with the claimant, and that the claimant had told him before March 22, 2003, that he had headaches and had been diagnosed with a brain tumor. Mr. Deshazer said the claimant would complain practically every day and was taking aspirin and BC's, "and stuff like that."

### **FINDING OF FACT**

The claimant does not establish by a preponderance of the evidence of record that the tumor on his cervical spine discovered after his compensable injury of March 22, 2003, is causally related to his compensable injury of March 22, 2003, or any work activity being performed prior to and up through that date.

### **DISCUSSION**

There are only two medical opinions offered relative to a causal connection between the claimant's tumor complaints and his compensable injury: that by Dr. Simpson of April 28, 2003 and Dr. Schlesinger of March 16, 2004. Dr. Simpson states that the tumor pre-existed the traumatic event of March 22, 2003, and that the lesion "may have been aggravated by the accident." Dr. Schlesinger states in his March 16, 2004 letter that he does not believe there is any causal connection at all between the tumor and the claimant's work activity or the injury he sustained on March 22, 2003. In fact, Dr. Schlesinger states in the March 16, 2004 letter that he feels that the traumatic injury on March 22, 2003, was a fortuitous event that brought the tumor to the claimant's attention and caused it to be removed.

In order for a worker's disability to be compensable, there must be a causal connection between the accident and a risk which is reasonably incident to the employment. There must be affirmative proof of a distinctive employment risk

as the cause of the injury; the connection with the employment cannot be supplied by speculation. Gerber Products v. McDonald, 15 Ark. App. 226, 691 S.W.2d 879 (1985).

Ark. Code Ann. §11-9-102(16)(B) states:

Medical opinions addressing compensability and permanent impairment must be stated within a reasonable degree of medical certainty.

Crudup v. Regal Ware, Inc., 341 Ark. 804, 20 S.W.3d 900 (2000). To be within a reasonable degree of medical certainty, a medical opinion must be more than speculation. Freeman v. Con-Agra Frozen Foods, 344 Ark. 296, 40 S.W.3d 760 (2001). Specifically, expert opinions based upon “can,” “could,” “may” or “possibly” are not opinions stated within a reasonable degree of medical certainty. Frances v. Gaylord Container Corporation, 341 Ark. 527, 20 S.W.3d 280 (2000).

In this case, Dr. Simpson says that the claimant’s tumor may have been aggravated by the compensable injury, and Dr. Schlesinger states unequivocally that the injury had nothing to do with the claimant’s tumor.

The claimant simply does not meet the burden of proof required to establish a causal connection between the physical complaints he attributes to the brain tumor and his compensable injury of May 22, 2003.

The above claim is respectfully denied and dismissed.

IT IS SO ORDERED.

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DAIL STILES  
Administrative Law Judge