

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F214391**

<b>JEFF CUMMINGS, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>MCGEORGE CONTRACTING COMPANY, EMPLOYER</b>	<b>RESPONDENT</b>
<b>TRAVELERS, CARRIER</b>	<b>RESPONDENT</b>

**OPINION FILED MAY 14, 2004**

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN on April 28, 2004, at Little Rock, Pulaski County, Arkansas.

Claimant represented by MR. RICHARD W. BROWN, JR..

Respondents represented by the HONORABLE GUY A. WADE, Attorney at Law, Little Rock, Arkansas.

**ISSUES**

A hearing was conducted to determine the claimant's entitlement to payment of medical expenses and temporary total disability benefits.

At issue is whether or not the claimant sustained a compensable injury as defined by Ark. Code Ann. §11-9-102. All other issues are reserved.

After reviewing the evidence impartially without giving the benefit of the doubt to either party, Ark. Code Ann. §11-9-704, I find the evidence preponderates in favor of the claimant on the issue of medical expenses. The claim for indemnity benefits, however, is denied.

**STATEMENT OF THE CASE**

The parties stipulated to an employer-employee-carrier relationship on December 5, 2002 at which time the claimant was earning an average weekly wage of \$559.55.

The claimant contends he tripped and fell at work from a rock shaker on December 5, 2002. An ambulance was called and the claimant was air-lifted to Baptist Hospital. The claimant seeks payment of his medical expenses and time off from work from December 5, 2002 to February 18, 2003.

The respondents contend the claimant did not sustain a compensable injury at work. His complaints were not caused by or related to his employment. Alternatively, the fall was idiopathic

and the respondents are not liable.

The following were submitted without objection and comprise the evidence of record: the parties' prehearing questionnaires and exhibits contained in the transcript.

The following witnesses testified at the hearing: the claimant and his brother-in-law Richard Brown; the claimant's former supervisor, David Bearden; and operations engineer, Chris Reynolds.

The claimant, age 21 (D.O.B. June 2, 1982), has a high school education. He began work for the respondent-employer in May 2002 in equipment maintenance. His health history includes neck and back pain with frequent headaches.

On December 5, 2002 the claimant was inspecting the rock shaker when his foot hung up on an angle iron. He lost his balance, fell and hit his head on the catwalk. The claimant was taken to the emergency room (ER) but released the same day.

David Bearden testified he saw the claimant laying on one side, unconscious, with blood coming out of his nose. He called 911 and the claimant was air-lifted to the ER. Mr. Bearden accompanied him to the hospital where the claimant was checked out for a concussion. After talking with co-workers, Ricky Cox and "Speck" Mr. Bearden was under the impression there were two incidents with the claimant that day however, neither of the co-workers were called to testify. Dr. Judy White Johnson's report refers to a minor incident earlier on December 5, 2002 when the claimant slipped on rocks and landed on his hands and knee. The claimant stated he was not injured in this incident.

Chris Reynolds testified the claimant's injury was not consistent with a fall because he had no cuts or bruises and his hard hat was found behind his body.

No direct testimony was presented on this point, however, in answer to Mr. Wade's question, the claimant indicated he lied to co-workers when he told them he flipped a race car. No medical records were introduced showing motor vehicle injuries or the dates of occurrence.

### **MEDICAL EVIDENCE**

\_\_\_\_\_The claimant spent one day in the hospital before he was discharged. However, his expenses are significant due to the ambulance at the scene of the accident, the helicopter that took him to the hospital and the battery of tests administered while he was in the intensive care unit (ICU) (see Dr. White's report of February 12, 2003 at page 5, first paragraph) including a drug test.

A claim was filed to get these expenses paid but the carrier obtained several extensions of time from the Commission to investigate the claim before stating their position on compensability.

Two months after the accident, the respondents sent the claimant to Dr. Judy White Johnson and Dr. Reginald Rutherford. Dr. Johnson found no evidence of cognitive impairment and she recommended no further treatment. Dr. Rutherford found no evidence of traumatic brain injury and the claimant was released to return to work with no impairment rating.

### **FINDINGS AND CONCLUSIONS**

As this claim arose after July 1, 1993, this case is governed by Act 796 of 1993 which must be strictly construed, Ark. Code Ann. §11-9-704, §11-9-717. The claimant has the burden of proving the following requirements, as defined by Ark. Code Ann. §11-9-102, by a preponderance of the evidence of record, which means "evidence of greater convincing force," Smith v. Magnet Cove Barium Corporation, 212 Ark 491, 206 S.W.2d 442 (1947):

- 1) proof that the injury arose out of and in the course of employment
- 2) proof that the injury caused internal or external physical harm to the body which required medical services or resulted in disability
- 3) proof establishing the injury by objective medical evidence
- 4)(a) proof that the injury was caused by a specific incident identifiable by time and place of occurrence

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or

- (b) proof that the injury was caused by rapid, repetitive motion and proof that the injury was the major cause of disability or need for medical treatment.

The cause of a fall at work is either known or unknown. In the case at bar, the claimant testified he fell because he tripped on angle iron. Therefore, this is a case of a known fall. Even if claimant had not recalled how he fell, I would have classified the accident as an unexplained fall.

There are two types of unknown falls, idiopathic and unexplained. An idiopathic fall is an occurrence caused by a non-occupational illness or weakness personal to the claimant. Idiopathic falls are not compensable unless the employment contributed to the risk or aggravated the injury by placing the employee in a position which increases the dangerous effect of the fall, such as on a height, near machinery or sharp corners or in a moving vehicle. Nuway Laundry & Cleaners v. Palmer, 12 Ark. App. 31, 670 S.W.2d 464 (1984), Moore v. Darling Store Fixtures, 22 Ark. App. 21, 732 S.W.2d 496 (1987).

Although the claimant was a poor historian and complained of headaches in the past, there is simply no medical evidence that the claimant received treatment for or was diagnosed with an illness or weakness prior to the incident at work. There is no evidence that he was under the influence of drugs (prescription or illegal) or alcohol at the time of his injury that might account for the fall. Although his supervisor doubted the claimant's history of injury, the explanations offered by David Bearden and Chris Reynolds are merely speculation. Little Rock Convention and Visitors Bureau v. Pack, 60 Ark. App. 82, 959 S.W.2d 415 (1997).

An unexplained fall is neutral in origin and is usually held to be compensable as long as the injury arose out of the employment (origin or cause of the accident) and occurred in the course of employment (time, place, circumstances). When an unexplained fall occurs while the employee is on the job and performing employment duties, the resulting injury is compensable. In the case of Fairview Kennels v. Bailey, 271 Ark. 712, 610 S.W.2d 270 (Ark. App. 1981), the claimant explained that while performing work-related duties she "fell and couldn't get up." This incident was

categorized as a compensable unexplained fall. Likewise, in the case of Roc-Arc Water Co. v. Moore, 10 Ark. App. 349, 664 S.W.2d 500 (1984), the claimant suffered a compensable unexplained fall when he became hot, fatigued and dizzy and passed out when performing his job. There was “no medical evidence that any internal condition personal to the claimant and unrelated to his employment caused the claimant’s fall.”

The evidence of record shows there is no dispute that the claimant was found unconscious at the work site and his employer called for paramedics who examined him and arranged for transportation to the hospital. The ER physicians admitted him to ICU and began testing. No final diagnosis of a physical injury was provided from the physicians at Baptist.

According to case law, when the employer directs the claimant’s medical treatment, the employer is responsible for those expenses even if it is later determined that the claim is not compensable. Southern Hospitalities d/b/a Quality Inn, et al v. Britain, 54 Ark. App. 318, 925 S.W.2d 810 (1996). Accordingly, I find the respondents are liable for all the medical expenses which appear in the exhibits to the claimant’s prehearing questionnaire.

When asked some two months after the accident, Dr. Rutherford assessed maximum medical improvement in February 2003, however, there are no reports from any physician excusing the claimant from work after his release from the hospital in December, 2002. It does not appear that the claimant had any physical injury that required treatment. Accordingly, I find the claimant has failed to prove that he was in a healing period or totally unable to work. Therefore, the claimant is not entitled to temporary total disability benefits. Arkansas Highway & Transportation Department v. McWilliams, 41 Ark. App. 1, 846 S.W.2d 670 (1993), Mad Butcher v. Parker, 4 Ark. App. 124, 628 S.W.2d 582 (1982).

1. The Workers’ Compensation Commission has jurisdiction of this claim in which the relationship of employer-employee-carrier existed among the parties on December 5, 2002.
2. The respondents directed the claimant’s medical care on December 5, 2002 during which time the claimant was unconscious. The respondents are liable for

medical expenses incurred with the ambulance, helicopter and hospital. Medical expenses are to be paid within thirty days of receipt pursuant to Commission Rule 30.

3. The claimant has proven by a preponderance of the credible evidence of record that he sustained a specific injury (tripping and falling) which arose out of and in the course of his employment (inspecting the rock shaker) which caused internal harm to the body (unconsciousness and bleeding from the nose) established objectively by the EMT's decision to transport the claimant to the ER, and by the ER physicians decision to admit the claimant to the intensive care unit.
4. No final diagnosis of a physical injury or work restrictions were provided from the ER physicians. Drs. Johnson and Rutherford have found no evidence of a closed head injury.
5. The claimant has failed to prove that he was totally unable to work or within a healing period after his release from the hospital. Therefore, he is not entitled to any temporary total disability benefits.
6. The respondents are directed to pay court reporting fees and expenses to Ms. Linda Parker pursuant to Commission Rule 20.

This claim for additional medical expenses is hereby awarded.

IT IS SO ORDERED.

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ELIZABETH W. HOGAN  
Administrative Law Judge