

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F303939

BRUCE CURETON

CLAIMANT

MARTIN MARIETTA MATERIALS, INC.

RESPONDENT

PACIFIC EMPLOYERS INSURANCE,
INSURANCE CARRIER

RESPONDENT

OPINION FILED FEBRUARY 27, 2004

Hearing before ADMINISTRATIVE LAW JUDGE MICHAEL L. ELLIG in Mena, Polk County, Arkansas.

Claimant represented by TERENCE JENSEN, Attorney, Benton, Arkansas.

Respondents represented by MICHAEL RYBURN, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above styled claim on January 21, 2004, in Mena, Arkansas. A pre-hearing order was entered in this case on October 22, 2003 . This pre-hearing order set out the stipulations offered by the parties and outlined the issues to be litigated and resolved at the present time. A copy of the pre-hearing order was made Commission's Exhibit No. I to the hearing.

The following stipulations were offered by the parties and are hereby accepted:

1. On April 11, 2003, the relationship of employee-employer-carrier existed between the parties.
2. The appropriate weekly compensation rates are \$329.00 for total disability and \$246.00 for permanent partial disability.
3. The claimant sustained an injury to his head when he fell on April 11, 2003.

By agreement of the parties, the issues to be litigated and resolved at the present time were limited to the following:

1. Whether the injury to the claimant's head on April 11, 2003 represents a compensable injury within the meaning of the Act.
2. The claimant's entitlement to the payment of medical expenses, temporary

total disability benefits from April 11, 2003 through August 16, 2003, and attorney's fees.

In regard to these issues, the claimant contends:

"Claimant contends that on April 11, 2003, he sustained a compensable injury. Claimant was hospitalized and missed work from April 11, 2003 until on or about August 16 2003. Claimant is entitled to temporary total disability benefits for the above mentioned period. Claimant has incurred significant medical bills for which the respondents are responsible. Respondents have controverted this claim in its entirety and are responsible for appropriate attorney's fees."

In regard to these issues, the respondents contend:

"The claimant fainted and fell to the ground. He was operating a trackhoe sitting in the operators seat in a stationary position when he fell out of the seat. He sustained a head injury. The fall was idiopathic and due to the claimant's fainting. The claimant had been treated for high blood pressure problems the day before the accident. The claimant was not injured because of the use of the machine and he was not at increased risk to be injured. He just slumped over and fell."

DISCUSSION

I. COMPENSABILITY

The central issue in this case is the question of whether the injuries sustained by the claimant on April 11, 2003, represent "compensable injuries" within the meaning of the Act. The burden rests upon the claimant to prove that these injuries were in fact "compensable". In order to meet his burden, the claimant must prove that the physical injuries he sustained on that date, to his face, skull, and brain, satisfy all of the necessary requirements for a "compensable injury", as that term is defined in the Act.

The medical evidence clearly "establishes" the actual existence of severe physical injuries to the claimant's skull and brain, with lacerations involving his face. The actual existence of these physical injuries is amply supported by numerous "objective findings". Unquestionably, the claimant has presented sufficient medical evidence to satisfy the requirements of Ark. Code Ann. §11-9-102(4)(D), and the respondents do not appear to

seriously dispute this fact.

The claimant must next show that these medically “established” physical injuries satisfy the definitional requirements of Ark. Code Ann. §11-9-102(4)(A)(i). This subdivision provides five definitional requirements. These are:

- (1) The physical injury must arise out of and occur in the course of the employment;
- (2) The physical injury must be caused by a specific incident;
- (3) The physical injury must be identifiable by time and place of occurrence;
- (4) The physical injury must cause internal or external physical harm to the claimant’s body;
- (5) The physical injury must result in disability or require medical services.

The evidence presented amply demonstrates that the claimant’s physical injuries, on April 11, 2003, satisfy the second through fifth requirements of this subdivision. The very nature of the claimant’s injuries could only be produced by a specific traumatic event. The very nature of these injuries also require that they must have occurred only shortly before they were observed on April 11, 2003, and all of these injuries were unquestionably caused by the claimant’s fall on that date. Finally, the very nature of these injuries are such that they obviously produced both internal and external physical harm to the claimant’s body, required immediate and extensive medical treatment, and resulted in at least a period of temporary disability. Again, the respondents do not seriously dispute any of these particular matters.

The actual controversy in this case arises over the question of whether these physical injuries “arose out of and occurred in the course of” the claimant’s employment on April 11, 2003. Historically, the phrase arising out of the employment refers to the origin or cause of the accident and the phrase in the course of the employment refers to the time, place, and circumstances under which the injury occurred, J & G Cabinets v. Hennington, 269 Ark. 789, 600 S.W. 2nd 916 (Ct. App. 1980).

In the present case, the evidence shows that the claimant's injuries occurred during the claimant's regular working hours and on the employer's premises within the work area to which the claimant has been assigned. The claimant testified that while he was operating his trackhoe, he heard it making an unusual noise. He unfastened his safety belt and got out of the cab of the trackhoe, intending to walk down the track off the machine to the area where the engine and hydraulic compartments were located. When he stepped out onto the track, his foot slipped, and he fell striking his head first on the edge of the metal tracks and then on the rocks that were on the ground around the trackhoe. Not realizing he was seriously injured, he got up from the ground and climbed back into the cab of the trackhoe. He continued to perform his usual duties of loading the rock with the trackhoe into dump trucks. While loading these trucks, he noticed that he was bleeding from his nose and called on the CB radio for assistance. He continued to load the dump trucks as they would arrive, until the foreman (Todd Wheeler) came on the scene. At that time, he climbed down from the trackhoe and his memory of the events ends.

_____The medical evidence reveals that the claimant sustained injuries in the form of superficial lacerations over the right temple, and a contusion with severe swelling around the orbit of the right eye. More importantly, the claimant experienced numerous fractures, including a fragmented depressed skull fracture in the middle fossa, a tripod fracture of the right maxilla, a fracture of the zygomatic arch of the right zygoma, and the sphenoid on the right. These fractures resulted in intra cerebral and subarachnoid hemorrhage with edema to the right side of the brain. These injuries also produced external bleeding from the lacerations and hemorrhaging into the right sinuses and right nostril. The initial medical records also note superficial abrasions to the claimant's right leg (Claimant's Exhibit No. 1, page 10).

As evidenced by the testimony of Dr. Finck, these massive and extensive injuries

would have required considerable force and trauma. They would be consistent with the claimant falling from a height and striking the right side of his face against a hard, protruding, and edged object, such as the side of the metal track of the trackhoe or, more likely, the rocks lying on the ground around the trackhoe. Thus, the nature of the claimant's injuries supports his testimony concerning the circumstances surrounding his fall.

Although the respondents appear to contend that the claimant's fall occurred inside the cab of his trackhoe, I do not find such a fall to be consistent with the nature and magnitude of the injuries the claimant sustained. As supported by the testimony of Dr. Finck, a fall from a seated position, inside the trackhoe, would not generate sufficient force or trauma to produce injuries of the magnitude and nature exhibited by the claimant. Even if the claimant were standing up inside the cab of the trackhoe at the time of his fall, the close nature of this compartment (as evidenced by the photographs) would still not allow a fall that would generate sufficient force to produce the types of injuries sustained. The photographs also failed to show any objects inside the cab of the trackhoe, which the claimant could have struck with his head, that would be reasonably expected to produce injuries of the type sustained by the claimant. The abrasions on the claimant's right leg would indicate the fall involved essentially the claimant's entire body, which would be a physical impossibility had the fall occurred and the claimant's body remained inside the cab of the trackhoe. In summary, the claimant's injuries could have only been reasonably produced by a fall from the trackhoe and not a fall inside the trackhoe.

This brings up the respondents' second argument, that being that the claimant's fall (whether inside or from the trackhoe) was idiopathic in nature. After consideration of all the evidence presented, it is my opinion that the greater weight of the credible evidence establishes that the claimant's fall was not idiopathic. There is no evidence, whatsoever, that the claimant was suffering from any condition that would be reasonably expected to produce a syncopal episode. The claimant testified that his fall was the result of slipping

when he stepped out onto the track of the trackhoe. I find this testimony to be credible. Not only did the claimant appear to be a credible witness at the hearing, his testimony is reasonable and is consistent with the other evidence presented. I would also note that the claimant is apparently a valued and long time employee of the respondent and is highly motivated, having returned to work with the respondent within a brief period of time following his serious and life threatening injuries.

I would also note that even if the evidence had shown that the claimant's fall, from the trackhoe, was the result of some idiopathic loss of consciousness, his injuries would still have been compensable. Clearly, it was the claimant's employment with the respondent that placed him in a position of increased risk of injury from such a fall (i.e. It placed him at an elevated height on a piece of machinery surrounded by broken chunks of rock), ERC Contractor Yard Sales v. Robertson 335 Ark. 63 (1998).

Therefore, I find that the claimant has proven by the greater weight of the credible evidence that the injuries he sustained in the fall, on April 11, 2003, arose out of and occurred in the course of his employment with this respondent. This satisfies the final definitional requirement of Ark. Code Ann. §11-9-102(4)(A)(i).

In summary, I find that the claimant has proven by the greater weight fo the credible evidence all of the statutory requirements necessary for the injuries he sustained in the fall on April 11, 2003, to represent "compensable injuries" within the meaning of the Act. The claimant is entitled to appropriate benefits under the Act for these "compensable injuries".

II. BENEFITS

It is apparent from the medical evidence presented that all of the medical services provided the claimant, by and at the direction of physicians at the Mena Medical center, physicians at St. Joseph's Mercy Hospital and Dr. John Finck constitute "reasonably necessary medical services" for these compensable injuries. These services were all related to and necessitated by the claimant's compensable injuries and were of a type and

nature commonly accepted by the general medical community as being appropriate to accurately diagnose and treat these types of injuries. These medical services not only had a reasonable expectation of accomplishing these purposes, but appear to have actually accomplished their intended purposes.

It further appears that the claimant was subsequently treated and even hospitalized for a pulmonary embolism. No medical reports or records concerning the claimant's treatment for this condition have been introduced. However in his testimony, Dr. Finck expressly attributed this pulmonary embolism to the treatment required for the claimant's compensable cerebral injuries. He states:

“Q. Do you think the pulmonary embolism is related to the incident of April 11, 2003?

A. I think it is. I think the fact that he required prolonged hospitalization and was immobile, that he developed the blood clots more likely when he was in the hospital in Hot Springs and subsequently, as happens occasionally, they break loose and cause a pulmonary embolus.”

This expert opinion of Dr. Finck is stated with clarity and certainty. The facts relied upon by Dr. Finck are supported the other evidence presented. The pulmonary embolus occurred while the claimant was being transported by ambulance from St. Joseph's Regional Health Center in Hot Springs, where he had been treated for his compensable cerebral injuries back to his home. During most, if not all, of his hospitalization at St. Joseph's, the claimant was kept essentially bedfast. For a significant portion of this hospitalization, he was on a respirator, being tube fed, and even actually comatose. The claimant also testified that when he regained consciousness at St. Joseph's he had a large bruise on his thigh that appeared to be from a restraining strap.

Clearly, the claimant's pulmonary embolus occurred very shortly after a prolonged

period wherein the claimant was kept immobile and lying down. This long period of inactivity and remaining in this reclining position could logically result in the formation of blood clots and a resulting pulmonary embolus. In the expert opinion of Dr. Finck, the claimant's long period of inactivity during the hospitalization necessitated by his compensable cerebral injuries, was the likely cause of the development of the subsequent pulmonary embolus. I find this opinion of Dr. Finck to be persuasive.

Therefore, the claimant's subsequent development of a pulmonary embolus represents a natural and probable consequence or complication of his compensable cerebral injuries. As a result, this natural and probable consequence or complication is itself "compensable", and the claimant would be entitled to receive, at the respondents' expense, any reasonably necessary medical services required by this compensable consequence or complication.

The claimant is also seeking temporary total disability benefits for the period of April 11, 2003, through August 16, 2003. In order to be entitled to such benefits, the claimant must first show that he remained within his healing period from the effects of his compensable injuries (and any compensable consequences or complications which these injuries may have produced). He must further show that he was also rendered totally disabled from performing regular gainful employment, as a result of his compensable injuries and/or any compensable consequences or complications they may have produced.

The duration of the healing period is essentially a medical question, which must be resolved on the basis of the greater weight of the credible medical evidence. 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 caused by the compensable injury. Once this underlying physical damage has resolved or at least stabilized (at a point where nothing further in the way of medical treatment offers any reasonable expectation of improvement), then the healing period has ended.

The medical evidence presented is not entirely clear as to when or even if the actual physical damage caused by the compensable injuries has stabilized. However, Dr. Finck indicated, in his testimony, that he felt the claimant capable of performing his preinjury employment by August 5, 2003, and on that date released the claimant to do so. The claimant testified that he actually returned to work for the respondent on August 16, 2003.

After consideration of the evidence presented, it is my opinion that the greater weight of the credible evidence proves that the claimant continued within his healing period and was rendered totally disabled from performing regular gainful employment from the date of the injury through August 5, 2003. Thus, he would be entitled to temporary total disability benefits for the period beginning April 12, 2003 (by law, the date of injury must be excluded) through August 5, 2003.

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On April 11, 2003, the relationship of employee-employer-carrier existed between the parties.
3. On April 11, 2003, the claimant earned wages sufficient to entitle him to weekly compensation benefits of \$329.00 for total disability and \$246.00 for permanent partial disability.
4. On April 11, 2003, the claimant sustained compensable injuries to his head.
5. The medical services provided the claimant for his compensable head injuries by and at the direction of the physicians at the Mena Medical Center, St. Joseph's Mercy Hospital, and Dr. John Finck represent reasonably necessary medical services within the meaning of Ark. Code Ann. §11-9-508, Pursuant to the provisions of this subsection, the respondents are liable for the expenses of such services, subject to the medical fee schedule

established by this Commission.

6. The medical services provided to the claimant for his subsequent pulmonary embolus by and at the direction of the physicians at the Mena Medical Center and by and at the direction of Dr. John Finck constitute reasonably necessary medical services for a compensable consequence or complication of the claimant's initial compensable injuries. Pursuant to Ark. Code Ann. §11-9-508, the expense of such medical services, subject to the medical fee schedule established by this Commission, is the liability of the respondents herein.
7. The claimant was rendered temporarily totally disabled as a result of his compensable injuries for the period beginning April 12, 2003 and continuing through August 5, 2003. He is entitled to temporary total disability benefits at the appropriate weekly rate during this period.
8. The respondents have denied the occurrence of any compensable injuries and have controverted this claim in its entirety.
9. A reasonable fee for the claimant's attorney is the maximum statutory attorney's fee on the controverted weekly indemnity benefits herein awarded to the claimant.

ORDER

The respondents shall pay to the claimant temporary total disability benefits for the period beginning April 12, 2003, and continuing through August 5, 2003.

The respondents shall be liable for the expense of the reasonably necessary medical services provided to the claimant for his compensable injuries and the compensable consequences or complications of those injuries, as heretofore set forth this Opinion. 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 fees on the controverted weekly indemnity benefits herein awarded to the claimant. One-half of this fee shall be the obligation of the respondents in addition to such benefits. The remaining one-half of this fee shall be withheld by the respondents from such benefits.

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

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

IT IS SO ORDERED.

MICHAEL L. ELLIG
Administrative Law Judge