

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F404763

ROBERT HENRY HAYNES (Deceased)	CLAIMANT
FROST OIL COMPANY, INC.	RESPONDENT
FEDERATED MUTUAL INSURANCE, INSURANCE CARRIER	RESPONDENT

OPINION FILED NOVEMBER 23, 2004

Hearing before ADMINISTRATIVE LAW JUDGE MICHAEL L. ELLIG, in Fort Smith, Sebastian County, Arkansas.

Claimant represented by EDDIE WALKER, JR., Fort Smith, Arkansas.

Respondents represented by ERIC NEWKIRK, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above styled claim on September 7, 2004, in Fort Smith, Arkansas. A pre-hearing order was entered in this case on July 28, 2004. 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. Immediately prior to the commencement of the hearing, and by the mutual agreement of the parties, the alleged date of injury was changed from July 16, 2003 to July 15, 2003. A copy of this order with that amendment noted thereon, was made Commission's Exhibit No. 1 to the hearing.

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

1. On all relevant dates the relationship of employee-employer-carrier existed between the parties.
2. The appropriate average weekly wage was \$494.00.
3. The claim is controverted in its entirety.

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

1. Whether the claimant sustained a "compensable" injury on July 15, 2003.
2. Whether the claimant's death was caused by the alleged compensable injury of July 15, 2003.
3. The claimant's entitlement to medical expenses, funeral expenses, death benefits for

his dependents, and attorney's fees.

In regard to these issues, the claimant contends:

- a. The claimant contends that the decedent became overheated on July 15, 2003 while pumping oil from a tank on his truck and that the overheating was to such an extent that he developed heat exhaustion. The claimant contends that as a complication of the heat exhaustion the decedent died on July 17, 2003. Further, the claimant contends that at the time of the decedent's death she was legally married to and dependent upon the decedent and that they had two children who were dependent upon the decedent. The claimant contends that she and her two children are entitled to death benefits and funeral expenses as a result of the job related heat exhaustion that resulted in the decedent's death.
- b. The claimant contends that her attorney is entitled to an appropriate attorney's fee.

The claimant further contends that Ark. Code Ann. § 11-9-114 is unconstitutional in that it violates the claimant's constitutional guarantee of equal protection under the law. Further, the statute is unconstitutionally vague. Further, the claimant contends that the heat exhaustion is the unusual and unexpected incident that caused or resulted in the physical harm that is evidenced in the medical records as abnormal laboratory results and complaints of dizzy spells, weakness, increased sweating and muscle cramps and fatigue. The claimant's death is a compensable consequence of the job related heat exhaustion and dehydration.

In regard to these issues, the respondents contend that the decedent did not sustain a compensable heart attack and cannot meet the requirements of Ark. Code Ann. § 11-9-114.

## DISCUSSION

### I. CONSTITUTIONALITY

In the subsequent expansion of the claimant's contentions, made immediately following the hearing, the claimant raises the constitutionality of Ark. Code Ann. § 11-9-114. Legislative enactments, such as Ark. Code Ann. § 11-9-114, are presumed constitutional. The claimant gives no basis for his contention that this subsection deprives him of his constitutional right to equal protection under the law or to point out which portion of this subsection is unconstitutionally vague.

After review of this subsection, I find that the presumption of constitutionality is controlling. The claimant has failed to show that this subsection deprives him of any of his constitutional rights to equal protection under the law, granted by either the Arkansas Constitution or the Constitution of the United States. The claimant has further failed to show that any portion of this subsection is “unconstitutionally” vague.

## II. COMPENSABILITY

The central issue in this case is the question of whether the claimant sustained a “compensable injury” on July 15, 2003. The burden rests upon the claimant to prove all of the necessary elements to establish the occurrence of a “compensable injury,” as that term is defined by the Act.

The first of these requirements is found in Ark. Code Ann. § 11-9-102(4)(D). This subsection applies to all compensable injuries, and states:

“A compensable injury must be established by medical evidence supported by objective findings as defined in subdivision (16) of this subsection.”

This subsection has been interpreted as requiring the claimant to prove by medical evidence, supported by objective findings, only the actual existence of the physical injury or condition alleged to be compensable.

The medical evidence “establishes” that the claimant was suffering from a number of maladies at the time of his emergency room visit on July 16, 2003, and at the time of his death on July 17, 2003. Three of these are of particular interest.

The first of these diagnosed conditions is that of heat exhaustion. Every physician who evaluated the claimant, concluded that he had experienced an episode of heat exhaustion. These opinions were based on the claimant’s history and subjective complaints, but were also supported by “objective” chemical tests that showed the presence of accompanying dehydration.

The second of these diagnosed conditions is that of a complete cardiopulmonary arrest. This is also the consensus diagnoses of all of the claimant’s physicians. This condition, which was the

direct cause of the claimant's death, is also clearly supported by "objective findings."

The third of these diagnosed conditions is that of an acute myocardial infraction. This condition has been diagnosed only by Dr. Maurice (Rick) Martin, the claimant's primary physician during his brief hospitalization. Dr. Martin's diagnosis of the existence of this condition is also supported by "objective findings" noted on EKG testing at the time of the claimant's cardiac arrest.

Therefore, all three of these conditions satisfy the requirements for a "compensable injury" that are contained in Ark. Code Ann. §11-9-102(4)(D). Next, it becomes necessary to determine which, if any, of these conditions are also shown to satisfy the definitional requirements for a "compensable injury" that are imposed by the Act.

The claimant's heat exhaustion would fall under the provisions of Ark. Code Ann. §11-9-102(40(A)(i). The definitional requirements of this subsection are:

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

After consideration of all the evidence presented, it is my opinion that the greater weight of the evidence proves that the claimant's heat exhaustion was caused by his outside employment activities for the respondent on July 15, 2003. These activities could reasonably and logically produce such a condition. There is a close temporal relationship between these activities and the occurrence of the onset of the claimant's heat exhaustion and there is no other reasonable explanation for the occurrence of this condition.

Therefore, the claimant has proven that his heat exhaustion arose out of and occurred in the course of his employment with the respondent which was caused by a specific incident, and is identifiable by time and place of occurrence. This Commission has repeatedly held that in regard

to heat exhaustion, employment activities performed over a single day are sufficiently limited in time and scope to constitute a “specific incident,” Grissom v. Young Well Service, 2002 AWCC 139 Cooper v. City of Fouke, 1999 AWCC 308, see also Huffy Service First v. Ledbetter, 76 Ark. App. 533, 69 S.W. 3<sup>rd</sup> 449 (2002).

The evidence further proves that this injury produced muscle cramps and changes in kidney function, due to the accompanying dehydration. While these symptoms appear to be in large part or in whole transitory in nature, they are still sufficient to prove at least temporary in general damage to the claimant’s body and to prove that medical services (in the form of clinical evaluation or testing and remedial treatment measures), were reasonably required.

In summary, the claimant has proven that his heat exhaustion on July 15, 2003, satisfies all of the definitional requirements of Ark. Code Ann. §11-9-102(4)(A)(i), as well as the general requirement of Ark. Code Ann. §11-9-102(4)(D). He has therefore proven this heat exhaustion represents a “compensable injury,” within the meaning of the Act and would be entitled to any and all appropriate benefits attributable to this compensable injury.

In regard to the claimant’s myocardial infarction and resulting complete cardiopulmonary arrest, the claimant contends that these conditions represent either a “compensable injury,” as that term is defined by Ark. Code Ann. §11-9-114, or is a “compensable consequence” of his compensable heat exhaustion. To satisfy the provisions of Ark. Code Ann. §11-9-114, the claimant contends that his heat exhaustion was the “accident” required by subdivisions (a) and the “unusual and unpredicted incident” required by subdivisions (b)(l).

Under either of these contentions the claimant must prove that his compensable heat exhaustion, on July 15, 2003, was the “major cause” of his fatal cardiac event on July 17, 2003. Compensable consequences must still satisfy all of the statutory elements of compensability, Larry Jones v. B.A.E. Sys. 2004, ACC. 81. The Legislature has seen fit to place strict requirements on the compensability of cardiac difficulties than on some other types of injuries. This legislative intent should not be controverted merely because the alleged employment related cause would itself

represent a “compensable injury.” After consideration of all the evidence presented, I find that the claimant has failed to prove this required causal relationship.

The claimant has presented two medical reports addressing this issue. These are the reports of Dr. Stephen C. Manus, dated April 21, 2004, and Dr. Maurice (Rick) Martin, dated May 14, 2004. Dr. Manus is a cardiologist, and Dr. Martin is a family practitioner. Both of these physicians evaluated and treated the claimant between July 16, 2003 and July 17, 2003.

In his report of April 21, 2003, Dr. Manus states:

“It is known that excess physical and mental stress can precipitate morbid and even mortal cardiovascular events as well as be causation. Mr. Haynes had not been symptomatic until the day of his busy and strenuous work load, diffuse diaphoresis, little food, little hydration, and later experienced diffuse muscle and body aches and cramps, and later, lower sternal and epigastric discomfort. Having no pre-existing symptoms and with the initiation of his symptoms after strenuous work, the close temporal relationship between the work and his death do suggest that the strenuous work away at least a precipitating cause or even a causal factor in Mr. Robert H. Hayne’s death.” (Emphasis mine)

In his report of May 14, 2004, Dr. Martin states:

“With regard to your second question, I believe within a reasonable degree of medical certainty, it is likely that Mr. Hayne’s myocardial infarction and subsequent death was a probable complication of his heat exhaustion. He also had a history of high blood pressure, which was already being treated at the time of his admission, and his blood pressure was basically normal on admission.

Certainly, elevated blood pressure over long periods of time do also contribute to the possibility of cardiac disease, but I believe in this situation the excessive stress of the heat exposure probably contributed to the onset of his cardiac disorder.”

The opinion of Dr. Manus is not stated “within a reasonable degree of medical certainty” as required by Ark. Code Ann. §11-9-102(16)(B). An opinion that the facts “suggest” a causal relationship is lacking in the requisite conviction and certainty necessary to meet the standard of §11-9-102(16)(B). Further, this opinion falls far short of establishing that any employment related cause would be the “major cause” of the physical harm and the claimant’s resulting demise.

The opinion of Dr. Martin is stated with the requisite conviction and certainty and even

contains the “magic words” required by §11-9-102(16)(B). However, Dr. Martin gives no explanation as to how he arrived at this conclusion. To interpret Dr. Martin’s opinion as indicating that the claimant’s heat exhaustion was the “major cause” of his subsequent cardiac event on July 17, 2003, and resulting death would also be inconsistent with his statements on the claimant’s death certificate, where he indicates that the claimant’s heat exhaustion was a “significant condition contributing to death but not resulting in the underlying cause” of death, i.e. the coronary occlusion, acute myocardial infarction, and myocardial asystole (arrest). Finally, such an opinion would not be consistent with the other evidence presented.

At first glance, the facts in this case would appear to coincide with those in the case of Huffy Service First v. Ledbetter, 76 Ark. App. 533, 69 S.W. 3<sup>rd</sup> 449 (2002), which was held compensable. However, upon closer condition, material differences do appear that would require an opposite finding.

In the present case, the evidence unquestionably shows that the claimant’s fatal myocardial infarction did not occur until approximately a day and a half after the employment activities that brought on his compensable heat exhaustion. Although the claimant presented to the emergency room with chest pains, as well as other symptoms, all of the subsequent evaluations and testing excluded any recent cardiac event or injury. Continuous EKG studies showed no changes until the time of the claimant’s fatal myocardial infarction, shortly after 4:00 a.m. on July 17, 2003. No elevations were noted in repeated cardiac enzyme tests. No thrombus, pericardial effusion, or segmental motion abnormalities were observed on the echocardiogram performed on July 16, 2003. The claimant’s physical examinations also showed that his chest pain was increased by light pressure, indicating it was muscular in origin.

During this interval the claimant was hospitalized and appropriate treatment was being provided to the claimant for his compensable heat exhaustion (as well as prophylactic coronary measures). The medical evidence indicated that by July 16, 2003, the claimant’s compensable heat exhaustion was resolved or resolving. He had been adequately re-hydrated and his kidney function

tests had returned to normal.

Thus, the facts in this case do not support the existence of a reasonably close temporal relationship between the claimant's work activities with the resulting heat exhaustion, and any cardiac injury, particularly his fatal cardiac event on July 17, 2003. This lack of reasonably close temporal relationship would be inconsistent with the work activities and resulting heat exhaustion being the "major cause" of the claimant's cardiac damage that resulted in the claimant's death on July 17, 2003.

In the present case, the medical evidence clearly shows the presence of pre-existing cardiac difficulties which could reasonably explain the claimant's fatal cardiac event on July 17, 2003. The claimant's initial EKG shows non specific ST-T changes, sinus bradycardia, and possible left ventricular hypertrophy. All of these abnormalities were determined to have been present prior to July 15, 2003. On physical examination, he was noted to have a basal systolic heart murmur. Although it was noted that the etiology of this condition was "undetermined," it was opined that it too was present prior to July 15, 2003. The echocardiogram (performed on July 16, 2003) showed mild concentric hypertrophy of the left ventricle, mild mitral valve insufficiency, slight left atrial dilation, moderate right ventricular dilation, moderate diastolic dysfunction, and slight thickening of the aortic valve. Again, all of these abnormalities were opined to have been present prior to July 15, 2003. A carotid doppler study showed the presence of a pre-existing atherosclerotic disease with resulting mild stenosis of the carotid arteries. The claimant's unfortunate death prevented the performance of either an angiogram or stress testing recommended by Dr. Manus to investigate the possibility of coronary ischemic disease from the claimant's pre-existing atherosclerosis.

The evidence also shows that the claimant had suffered from hypertension since at least 1999. Contrary to the testimony of the claimant's widow, the more credible medical evidence shows that during a major portion of this period the claimant's hypertension went untreated. Office notes made during an examination in the latter part of 2002 show recorded blood pressure of 170/92 and 150/90. Records from Available Medical Care dated April 17, 2003, record a history that

the claimant had not taken his high blood pressure medication for a year and a half, but would check with his doctor about getting this medication. At the time his blood pressure was recorded as 172/110 and 180/120. During a DOT physical, performed on June 3, 2003, the claimant was reported to have given a history of hypertension, but indicated that he had only taken the medication for a “short time” and was taking no medication at the time. Curiously when the claimant’s blood pressure was taken on admission, it was noted to be 132/60. However, when it was retaken shortly thereafter by Dr. Martin, it was noted to be 166/74.

Clearly, both Dr. Martin and Dr. Manus indicated that the claimant’s hypertension and other pre-existing conditions place him at risk of suffering a fatal cardiac event. In fact on the death certificate, Dr. Martin clearly indicates this fact. The only reason that any consideration was given to the claimant’s work related heat exhaustion was that it occurred within two days prior to the claimant’s fatal cardiac event and both had seen the claimant at that time. While this temporal relationship may be sufficient to include that his heat exhaustion played some causal role in his fatal cardiac event, I simply do not find it sufficient in light of all the evidence presented, to include that it was the “major cause” (more than 50%) of this event. Therefore, I find that the claimant has failed to prove that his myocardial infarction and resulting cardiopulmonary arrest represent a “compensable injury” or “compensable consequence” of his employment related heat exhaustion.

The claimant would still remain entitled to appropriate benefits for his compensable heat exhaustion. The claimant’s unfortunate demise from his non compensable cardiac event, within two days of this compensable injury prevent any award of temporary or permanent disability benefits for his compensable heat exhaustion. However, he would be entitled to the payment of the expense of “reasonably necessary” medical services rendered him for his compensable injury.

Medical services are “reasonably necessary” when they are necessitated by or connected with the compensable injury and have a reasonable expectation of accomplishing the purpose for which they were intended, at the time they were provided. The services may have a number of purposes. They may be intended to improve the actual physical damage caused by the injury to

accurately diagnose the nature and extent of the injury, to merely provide symptomatic relief, to stabilize the injury or to maintain the level of healing achieved.

After consideration of all the evidence presented, I find that all of the services provided the claimant by and at the direction of the various physicians at St. Edwards Mercy Medical Center, from the time of his presentation at the emergency room (on July 16, 2003 until the occurrence of his ultimately fatal cardiac event (during the early morning hours of July 17, 2003) represent “reasonably necessary” medical services for his compensable heat exhaustion. This would include the consultation by Dr. Manus and the various tests performed at this request.

As previously noted, medical services that are medically appropriate to accurately diagnose the nature and extent of the compensable injury are “reasonably necessary “ medical services. When the claimant presented at the emergency room, he was exhibiting symptoms that could be solely the result of heat exhaustion or could be the result of an ongoing myocardial infarction, which might or might not be related to the heat exhaustion. The consultation and the various tests were performed to confirm or eliminate an ongoing myocardial infarction or some other type of cardiac/circulatory events as another potential cause of the claimant’s symptoms. The evidence shows that these tests actually accomplished this intended purpose and effectively eliminated an ongoing myocardial infarction or cardiac/circulatory event as the cause of the symptoms he was exhibiting at that time. This diagnosis by elimination is a method commonly employed to accurately ascertain the nature and extent of an injury or condition.

However, I do find that the resuscitative measures performed on the claimant after his non compensable cardiac event on July 17, 2003, do not represent “reasonably necessary” medical services. The services were required solely by this non compensable and ultimately fatal cardiac event.

#### FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Arkansas Workers’ Compensation Commission has jurisdiction of this claim.
2. On July 15, 2003, the relationship of employee-employer-carrier existed between

the parties.

3. On July 15, 2003, the claimant earned an average weekly wage of \$494.00.
4. On July 15, 2003, the claimant sustained a compensable injury in the form of heat exhaustion.
5. The claimant has failed to prove by the greater weight of the credible evidence that his employment activities on July 15, 2003, or his resulting compensable heat exhaustion was the “major cause” of his fatal cardiac event or death on July 17, 2003. Thus, this fatal cardiac event would not represent a “compensable injury” or “compensable consequence” sufficient to entitle the claimant to any benefits under the Act.
6. The medical services rendered to the claimant by and at the direction of various physicians at St. Edwards Mercy Medical Center from the time of his presentation at the emergency room on July 16, 2003, until his fatal cardiac event on July 17, 2003, represents reasonably necessary medical services for his compensable heat exhaustion. Pursuant to Ark. Code Ann. § 11-9-508, the respondents are liable for the expense of these services, subject to the medical fee schedule established by this Commission.
7. The claimant would not be entitled to any disability benefits provided by the Act for his compensable heat exhaustion.
8. The respondents have denied the occurrence of any type of compensable injury and have controverted this claim in its entirety.
9. As no indemnity benefits or survivor’s benefits have been awarded in this claim, no fee can be awarded to the claimant’s attorney.

#### ORDER

The respondents shall be liable for the expense of the medical services provided to the claimant by and at the direction of various physicians at St. Edwards Mercy Medical Center from the

time of the claimant's presentation at the emergency room of this facility on July 16, 2003, until the occurrence of this fatal cardiac event on July 17, 2003. This liability is subject to the fee schedule established by this Commission.

For the reasons heretofore set forth in this Opinion, the claimant's request for funeral expenses and other death benefits must be denied and dismissed.

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.

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MICHAEL L. ELLIG  
Administrative Law Judge