

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F312921

BRADLEY HOWARD, Employee	CLAIMANT
WESTERN SIZZLIN, Employer	RESPONDENT
HOSPITALITY ASSOCIATION WORKERS' COMPENSATION TRUST, Carrier	RESPONDENT

OPINION FILED APRIL 15, 2004

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

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

Respondents represented by GAIL O. MATTHEWS, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On March 24, 2004, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on January 28, 2004, 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. The relationship of employee-employer-carrier existed among the parties on June 13, 2003.

At the time of the hearing the parties agreed to stipulate that claimant earned an average weekly wage of \$85.84 which would entitle him to compensation at the rate of \$57.00 per week for temporary total disability benefits.

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

1. Compensability.
2. Medical.

3. Temporary total disability benefits.
4. Attorney fee.

At the time of the hearing the period of requested temporary total disability benefits was clarified to include June 13, 2003 through July 5, 2003.

The claimant contends he sustained a compensable injury on June 13, 2003 and that he is entitled to temporary total disability benefits and medical benefits, as well as an attorney fee.

The respondents contend that the syncopal event was not job related.

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 January 28, 2004, and contained in a pre-hearing order filed that same date, are hereby accepted as fact.
2. The parties' stipulation that claimant earned an average weekly wage of \$85.84 which would entitle him to compensation at the rate of \$57.00 per week for temporary total disability benefits is also hereby accepted as fact.
3. Claimant suffered a syncopal event while working for respondent on June 13, 2003. This syncopal event constitutes an unexplained fall and is therefore a compensable injury.
4. Respondent is liable for payment of all reasonable and necessary medical treatment provided in connection with claimant's compensable injury. This includes testing performed by claimant's treating physicians.

5. Claimant is entitled to temporary total disability benefits beginning June 14, 2003 and continuing through July 5, 2003.

6. Respondent has controverted claimant's entitlement to unpaid indemnity benefits.

FACTUAL BACKGROUND

The claimant is a very nice 17-year-old young man who is in the eleventh grade at Huntsville High School. Claimant began working part-time for the respondent as a fry cook in February 2002.

Claimant testified that on June 13, 2003, he went to work and performed his job as a fry cook for a period of time. At some point the claimant went outside to the respondent's back loading dock to work. Claimant's job duties required him to take cardboard boxes from the loading dock, "break them down," and place the flat cardboard box in a dumpster. After performing this job duty for some period of time, the claimant apparently suffered his syncopal episode and blacked out. Claimant's next memory is awakening in the hospital.

Following claimant's treatment at the emergency room on June 13, 2003, claimant underwent several tests and an evaluation by Dr. Michael Morse.

Claimant has filed this claim contending that he suffered a compensable injury. He seeks payment of related medical treatment, temporary total disability benefits from the date of the injury through July 5, 2003, as well as a controverted attorney fee.

ADJUDICATION

Claimant's claim is for an injury which was caused by a specific incident identifiable by time and place of occurrence. The Commission has stated in *Henry Weaver v. Precision Packaging*, Full Commission Opinion filed February 2, 1995 (E400880), that pursuant to Act 796 of 1993, the following must be shown in order to establish the

compensability of an injury occurring after July 1, 1993:

- (1) proof by a preponderance of the evidence of an injury arising out of and in the course of his employment;
- (2) proof by a preponderance of the evidence that the injury caused internal or external physical harm to the body which required medical services or resulted in disability or death;
- (3) medical evidence supported by objective findings, as defined in Ark. Code Ann. §11-9-102(16), establishing the injury;
- (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and is identifiable by time and place of occurrence.

When an employee sustains an “unexplained” injury at work, the injury is considered compensable. When an employee suffers an “idiopathic” injury at work, the injury is generally not compensable because the injury is considered personal in nature and does not arise out of and in the course of employment. *Harrison v. Mr. Burger of Arkansas, Inc.*, Full Commission Opinion filed November 17, 2003 (F208765); *Crawford v. Single Source Transportation*, Full Commission Opinion filed August 7, 2003 (F201868).

The distinction between idiopathic and unexplained falls was discussed by the Court of Appeals in *Moore v. Darling Store Fixtures*, 22 Ark. App. 21, 732 S.W. 2d 497 (1987):

When one suffers an injury at work, the cause is, obviously, either known or unknown. Larson’s treatise on workers’ compensation law states that the most common example of a situation in which the cause of the harm is unknown is the unexplained fall in the course of employment and that and that most courts confronted with that situation have seen fit to award compensation. However, injuries from idiopathic falls do not arise out of the employment unless the employment contributes to the risk or aggravates the injury by, for example, 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.

The word ‘idiopathic’ is defined in Webster’s Third New International Dictionary, Unabridged (1976), as (1) peculiar

to the individual, (2) arising spontaneously or from an obscure or unknown cause. Although the two concepts are frequently confused, Larson says 'unexplained-fall cases being with a completely neutral origin of the mishap, while idiopathic fall cases begin with an origin which is admittedly personal and which therefore requires some affirmative employment contribution to offset the prima facie showing of personal origin.' (Citations omitted).

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant's syncopal episode and fall on June 13, 2003 was an unexplained fall, not an idiopathic fall personal in nature to the claimant.

As previously noted, claimant was performing the job duties of breaking down cardboard boxes and placing them in a dumpster when he suffered his syncopal episode. Although claimant testified at the hearing that he had been performing this activity for approximately 30 minutes, claimant testified at his deposition that he did not know how long he had been performing the activity. Claimant also acknowledged at the hearing that he had not gotten unusually hot that day and that he had not gotten hot while cooking. Claimant also acknowledged that breaking down boxes was not difficult. Claimant also testified that he had no prior history of passing out and no history of seizures.

The medical records indicate that various tests were performed on the claimant including cervical spine films and electroencephalogram (EEG), and an MRI scan of the brain. All of these tests were negative with no explanation for the claimant's syncopal episode.

Following the claimant's EEG and MRI scan, Dr. Morse in a report dated July 2, 2003 stated that "The etiology of this is unclear." Dr. Morse went on to speculate that it is possible that the claimant got overheated while he was cooking. This is speculation on Dr. Morse's part and contrary to claimant's testimony. However, the relevant fact is Dr. Morse's opinion that the etiology of claimant's syncopal episode is unclear.

I also note that Dr. Morse authored a letter dated March 10, 2004 indicating that it

was appropriate to run a number of tests in an attempt to determine the cause of claimant's syncopal episode. Dr. Morse went on to state that the syncopal episode was most likely cardiovascular and vasovagal in nature secondary to the claimant becoming overheated while working in an enclosed space in a hot environment. Again, the evidence does not support Dr. Morse's opinion that the claimant overheated or that he was working in an enclosed space.

While Dr. Morse's opinion and report do not support a finding that claimant's syncopal episode were related to overheating at work, Dr. Morse's medical report does support a finding that the cause of claimant's syncopal episode was unknown. As previously noted, objective testing performed in this case revealed no cause of the claimant's syncopal episode. Furthermore, Dr. Morse in his report of July 2, 2003 stated that the etiology of claimant's syncopal episode was unclear and uncertain. In other words, claimant's syncopal episode is unexplained. While there is no evidence directly linking the claimant's syncopal episode to his work activities with respondent, neither is there sufficient evidence indicating that the syncopal episode was idiopathic or the result of a personal condition. Given that the syncopal episode is unexplained, I find that claimant's injury is compensable according to Arkansas law.

In reaching this decision, I note that the Full Commission addressed a similar fact circumstance in *Harrison v. Mr. Burger of Arkansas, Inc.*, Full Commission opinion filed November 17, 2003 (F208765). In that particular case, an employee suffered a syncopal episode while waiting on a customer in a fast food restaurant. The Commission found that the fall was idiopathic as opposed to unexplained. In support of its finding the Commission noted several factors; notably, the opinion of Dr. Knox who did not attribute that employee's condition to her work environment and also the opinion of Dr. Morse that he saw nothing in the employee's work environment which could have precipitated the syncopal episode and stated that he found that the work place was not at fault in anyway

in that particular case. Dr. Morse also noted that the claimant had some personal conditions which could have caused that syncopal episode.

In this particular case, the claimant's syncopal episode is unexplained. Therefore, it is compensable.

Based upon the foregoing, I find that claimant has met his burden of proving by a preponderance of the evidence that his injury arose out of and in the course of his employment with respondent and that it was the result of a specific incident identifiable by time and place of occurrence.

I also find that claimant has met his burden of proving by a preponderance of the evidence that his injury caused internal physical harm to his body which required medical services and that claimant has offered medical evidence supported by objective findings establishing an injury. Although several tests were performed on the claimant which were returned negative, the medical reports indicate that claimant had injuries to his head as a result of the fall on June 13, 2003. The emergency room report of June 13, 2003 refers to a hematoma observed on the back of claimant's head. In addition, another medical report from June 13, 2003 reveals an abrasion to claimant's head with minimal bleeding. These are objective findings which are sufficient to satisfy claimant's burden of proof.

Accordingly, for the foregoing reasons, I find that claimant's syncopal episode at work on June 13, 2003 was the result of an unexplained fall and is therefore compensable. Respondent is liable for payment of all reasonable and necessary medical treatment provided in connection with claimant's compensable injury. This includes testing performed at the direction of claimant's treating physicians.

I also find that claimant has met his burden of proving by a preponderance of the evidence that he is entitled to temporary total disability benefits beginning June 14, 2003, the day after his compensable injury, and continuing through July 5, 2003. The medical evidence indicates that following this compensable injury the claimant was under the care

of his authorized treating physicians including the emergency room physicians and eventually Dr. Michael Morse who recommended additional testing. After that testing was complete, Dr. Morse in a report dated July 2, 2003 indicated that claimant was released to return to work as of July 5, 2003. Based upon the evidence presented including claimant's testimony and the documentary evidence, I find that claimant remained within his healing period and that he suffered a total incapacity to earn wages beginning June 14, 2003, the day after his fall, and continuing through July 5, 2003, the date he was released to return to work by Dr. Morse.

AWARD

Claimant has met his burden of proving by a preponderance of the evidence that he suffered a compensable injury while working for respondent on June 13, 2003. Respondent is liable for payment of all reasonable and necessary medical treatment provided in connection with claimant's compensable injury. In addition, claimant is entitled to temporary total disability benefits beginning June 14, 2003, and continuing through July 5, 2003. Respondent has controverted claimant's entitlement to all unpaid indemnity benefits.

Pursuant to A.C.A. §11-9-715(a)(1)(B), claimant's attorney is hereby awarded an attorney fee in the amount of 25% of the indemnity benefits payable to the claimant. This fee is to be paid one-half by the carrier and one-half by the claimant. The respondents are to withhold the claimant's portion of the attorney's fee from the claimant's award and to pay the attorney's fee directly to the claimant's attorney.

All sums herein accrued are payable in a lump sum without discount and this award shall bear interest at the maximum legal rate until paid.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE