

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NUMBER F300739

JIMMIE L. KIMBRELL, EMPLOYEE

CLAIMANT

**USA TRUCK, INC.,
SELF-INSURED EMPLOYER**

RESPONDENT

OPINION FILED JULY 19, 2004

The hearing was conducted on April 1, 2004, before ADMINISTRATIVE LAW JUDGE DON N. CURDIE, in Harrison, Boone County, Arkansas.

Claimant was represented by Laura J. McKinnon, Attorney at Law, Fayetteville, Arkansas.

Respondent was represented by Rodney L. Mills, Attorney at Law, Fort Smith, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above-styled claim on April 1, 2004, in Harrison, Arkansas. Although Administrative Law Judge Don N. Curdie conducted this hearing, he left the Arkansas Workers' Compensation Commission before an opinion could be prepared. Neither party objected to reassignment of this case and preparation of an opinion based on the record as it stands.

A Prehearing Order was filed in this case on December 1, 2003. The Prehearing Order set out the stipulations by the parties and outlined the issues to be litigated. The following stipulations were submitted by the parties and are accepted:

1. The employee/self-insured employer relationship existed at all relevant times.
2. The claimant is entitled to the maximum compensation rates.

By the terms of the Prehearing Order, and as modified by the parties at the hearing, the issues to be litigated and resolved at the present time are limited to the following:

1. Did Claimant sustain a compensable heart attack injury (Ark. Code Ann. § 11-9-114) on December 26, 2002?
2. Is Claimant entitled to temporary total disability from December 26, 2002 to March 24, 2003?
3. Is Claimant entitled to medical benefits?
4. Is Claimant entitled to an attorney's fee?

Claimant contends that he suffered a compensable myocardial infarction on December 26, 2002, while engaged in a work activity that required extraordinary and unusual exertion. He further contends that the accident is the major cause of his physical harm. As indicated, he seeks temporary total disability and medical benefits, in addition to an attorney's fee based upon controversion.

Respondent counters that the alleged accident is not the major cause of Claimant's physical harm; Respondent points to pre-existing risk factors. Further, Respondent contends that Claimant's work activity was not extraordinary and unusual.

DISCUSSION

Sherry Nelms witnessed Claimant's work activities at issue on December 26, 2002 when she came upon Claimant's tractor and trailer in the middle of the road. The trailer was disconnected from the tractor and appeared to be nose down; both were blocking traffic. Nelms assisted Claimant by directing traffic while he tried to raise the trailer's front legs, so that he could back the tractor under the trailer and reattach them.

Nelms testified that Claimant was “giving it everything he could.” She recalled that it was a little after 7:00 in the morning, with a temperature around 17 degrees and snow and ice on the ground. Nelms was present a good forty-five minutes; at one point she went to check on Claimant, who had stopped attempting to raise the trailer. Claimant appeared “winded, very winded.” Nelms observed Claimant climb back into his tractor, lay back, and start holding his chest; he had trouble breathing and did not respond when Nelms asked if he was all right. She was under the impression that Claimant was possibly having a heart attack.

Claimant explained that the two legs on either side of the front of the trailer are known as “dollies.” These legs are designed to support the weight of the trailer; the process of raising the trailer by lowering the legs is known as “dollying up” the trailer. Typically, a parked trailer is left high enough up on the dollies that a tractor can be backed up under the trailer; most of the trailer’s weight is thereby taken off of the dollies, making it easier to raise the legs to their traveling position.

On the morning of December 26, 2002, Claimant backed his tractor under the trailer until he believed that it “caught,” that is, that the trailer had latched to the tractor’s fifth wheel. After testing the attachment a couple of times, Claimant pulled out of his work place onto the road, where the trailer almost immediately slipped off the tractor. Claimant testified that the trailer did not actually land on its nose; the trailer actually fell on to the legs, which had to be extended further so that Claimant could back his tractor under the trailer and reattach the two.

After the trailer slipped off, Claimant immediately stopped, got out, and proceeded to crank the dollies down in order to raise the trailer. The trailer was heavy,

so cranking the legs down was difficult; despite using both arms, Claimant did not believe he was making much progress. Claimant testified: "I just kept trying, I would stop and get my wind and try again, stop and get my wind, try again...." At some point, Claimant recalled "I got winded and I stopped, slowed down there and then my chest started hurting right in there." At first Claimant thought the cold air was to blame. He got into his tractor and sat down, but the pain did not go away, so when the police arrived he told them he might need an ambulance to go to the hospital. An ambulance was called, and Claimant was delivered to the emergency room at the local hospital and ultimately flown to Baptist Medical Center in Little Rock.

Claimant's medical history indicates the presence of hypertension and diabetes, two of the major risk factors for coronary artery disease. Claimant was diagnosed with diabetes five or six years prior to the hearing. A clinical laboratory report dated January 12, 2002, includes the following hand written notes: "1) pt needs more exercise[;] 2) Diabetes - 'out of whack' needs attention." A report dictated December 26, 2002, entitled "History and Physical," states as follows:

[Claimant] has a known history of hypertension but has not been very compliant with his medical regimen by his account.

.....

The patient is a nonsmoker and has been told in the past he is diabetic but he is not currently taking his medications as prescribed. He also had a report of history of hypertension but also is not taking his medications as prescribed. He is not aware of his current cholesterol profile.

Claimant had stopped smoking some fifteen or twenty years "ago." However, prior to quitting, Claimant had smoked for thirty years; at the time he quit, he was smoking as much as two or three packs a day. Claimant also testified that his father died of a heart attack presumably caused by diabetes.

Claimant and his wife believed that Claimant's medical problems were under control at the time of the injury. Claimant had lost weight and monitored his diabetes both on the road and at home. Claimant also recalled being told that his cholesterol was "alright." The parties stipulated that Claimant's wife "would testify that the claimant had no heart symptoms prior to December 26, that his diabetes was controlled as far as she was aware and that []he was in good physical health."

Claimant underwent an operation at Baptist Medical Center on December 26, 2002. A diagnostic heart catheterization revealed sequential/tandem 90% stenoses with evidence of residual thrombus in Claimant's mid-right coronary artery.

Dr. Scott Davis testified that Claimant "was found to have a totally occluded right coronary artery segment which was treated with percutaneous coronary intervention involving balloon angioplasty and subsequent stenting of the lesion." A Baptist Medical Center report dated January 2, 2003, notes that Claimant's principle diagnosis was acute myocardial infarction; secondary diagnoses included coronary atherosclerosis, essential hypertension, and diabetes melitus. Claimant convalesced well following his operation and was discharged on December 28, 2002.

Dr. Davis and Dr. James M. Hawk signed statements relevant to Claimant's case. The following question was posed to Dr. Hawk in writing: "Is this patient's work-related injury (heart attack while attempting to jack a trailer in 13 degree weather) the substantial contributing factor (51% or more) to his current disability?" On August 21, 2003, Dr. Hart checked "Yes." On October 7, 2003, Dr. Davis signed a note stating: "This letter is written to confirm that my clinical notations regarding the above patient [Claimant] are supported by objective findings and are stated within a

reasonable degree of medical certainty.” On that same date Dr. Davis signed another note stating: “Based upon objective medical findings and within a reasonable degree of medical certainty, it is my opinion that this patient [Claimant] sustained a work-related accidental injury on 12/26/2002. This injury was the major cause 51% or more of the patient’s need for medical treatment and disability.”

Dr. Davis, a cardiologist, was deposed on December 2, 2003. He first treated Claimant on December 26, 2002, the date of his surgery. He noted Claimant’s successful operation and prior history of hypertension and diabetes. He noted that these are two of the major risk factors for coronary artery disease, as being either direct contributors or increasing a person’s risk for developing that disease. Regarding Claimant’s specific heart condition prior to surgery, Dr. Davis noted two incidents of occlusion of Claimant’s right coronary artery; he affirmed that these incidents of occlusion were precipitated by Claimant’s hypertension and diabetes.

Dr. Davis was asked to expand upon a principle diagnosis of coronary artery disease, noted in an office visit note dated January 9, 2003. He defined it as “the development of plaque and atherosclerotic occlusion of a vessel that occurs over time.” Dr. Davis noted that two of the main contributors to this disease are hypertension and diabetes. While this disease had not been diagnosed in Claimant prior to December 26, 2002, Dr. Davis believed it was present prior to that time.

Dr. Davis was questioned by Respondent’s attorney about his October 7, 2003 note regarding objective medical findings and the major cause of Claimant’s need for medical treatment. After affirming his agreement with that note, the deposition proceeded as follows:

Q: What objective medical findings are you referring to that support that opinion?

A: A, the patient was performing job duties when he had this event. B, he had previously diagnosed hypertension and diabetes that were defined as a major cause of the event.

Q: Okay. Anything else that you would consider objective findings in support of that opinion?

A: No.

Q: Now, explain for me the opinion that the incident or the injury on 12/26/02 was quote, a work-related accidental injury, end quote?

A: The injury occurred while he was performing job duties related to his occupation and, you know, as such, falls under that umbrella.

Q: Okay. And realizing that you are not a lawyer, and I am not trying to put you in a position to be one, Doctor, but is it your opinion that Mr. Kimbrell's work duties actually caused his heart attack?

A: Within a reasonable degree medical certainty.

Q: Tell me about that, what do you mean by that?

A: That the exerting himself and carrying forth his job responsibilities very well could have precipitated the event.

Q: What role did his coronary artery disease play in the heart attack?

A: Well, I mean that is his diagnosis, so he has coronary artery disease, and that is why he had the heart attack.

Q: And what role did the hypertension and diabetes play with the heart attack?

A: They are precursors to developing coronary artery disease.

Q: Okay. In your opinion, would Mr. Kimbrell have been susceptible to a myocardial infarction on 12/26/02 if he did not have these preexisting problems?

A: He would be less susceptible.

Q: It is fair to say that those preexisting problems, and by that I mean the hypertension, diabetes, the coronary artery disease were contributing factors to Mr. Kimbrell's heart attack?

A: That is a correct statement.

Q: Now, you also state in this note that I have in front of me, and I am quoting, this injury was the major cause, 51 percent or more, of the patient's need for medical treatment and disability?

A: That is correct.

Q: What disability are you referring to there?

A: The myocardial infarction which then led to his compromised left ventricular function.

Q: But at this point, there is no assessment of disability, and by that I mean an impairment rating or anything like that to your knowledge?

A: To my knowledge, no.

Q: Now, you also indicate that the injury was the major cause of that treatment or disability. Explain to me what you mean by that?

A: In sustaining the infarction, that then led to the cascade of events which limited his ability then to return to his work duties and execute his work responsibilities, and it was in the treatment, the ongoing treatment of his injury that, you know, has precluded him from returning to work at full capacity during that time.

Q: Doctor, is it your opinion that Mr. Kimbrell's work activities on 12/26/02 were the major cause of his need for medical treatment and disability?

A: Say that statement again, please.

Q: Sure. Is it your opinion that Mr. Kimbrell's work activities on 12/26/02 were the major cause of his medical treatment and disability, and by major cause, I am meaning 51 percent or more?

A: This is a semantics thing, but it was in performing his duties that he had the myocardial infarction event which then led to his medical treatment.

Q: I understand. Would it be fair to say that Mr. Kimbrell's preexisting

hypertension, diabetes, coronary artery disease were a significant and major cause of his myocardial infarction on 12/26/02?

A: That is a correct statement.

Claimant's attorney then cross-examined Dr. Davis at the deposition.

Q: Doctor, the reason we are here today is both yourself and Dr. Hawk had signed those forms stating that the heart attack was due to the trauma, and I think we are getting a little confused here today. As I understand your testimony, you are saying that the preexisting risk factors were the reason for the CAD; is that correct?

A: That is correct.

Q: But what we are more interested in today under Workers' Comp law is did his dollying up the trailer, and we are alleging that it was an extraordinary exertion. His trailer had fell off of his tractor right in the middle of the road in the middle of an intersection, and he was having to manually jack it up in 13-degree weather. So what your patient is alleging is that that exertion, that moment was the precipitating factor that caused the rupture at that point?

A: Right. I agree. That is a valid statement.

Q: Okay. So when you were testifying earlier about the risk factors being the major cause, were you instead referring to the coronary artery disease?

A: That is correct.

Q: But as far as the actual MI, what caused it to happen on this day rather than any other day, would it have been the sudden exertion?

A: That is correct.

Q: Would it then be safe to say that the sudden exertion –

A: Precipitating the infarction, that is a valid statement.

Q: And in precipitating, at least as far as needing treatment on that day, more than 51 percent was the reason with the exertion?

A: I agree.

Dr. Hawk was deposed on January 28, 2004. His primary emphasis or expertise is in general practice; he agreed that Dr. Davis, as a cardiologist, would have more expertise on cardiology issues than he would. Dr. Hawk first saw Claimant on January 8, 2002. At that time, Claimant's blood sugars were running high, and he and Dr. Hawk had a lengthy discussion concerning, among other things, diabetes mellitus and obesity. Dr. Hawk acknowledged that, if Claimant's diabetic condition remained uncontrolled, it could lead to atherosclerosis or hardening of the arteries, among other things.

Dr. Hawk was questioned concerning the note he checked on August 21, 2003. Dr. Hawk confirmed his opinion that Claimant's work-related activity caused the blockage in his heart. He noted that Claimant's coronary artery disease was a pre-existing condition; he stated "that a 59 year old man is going to have some coronary artery disease and that can lead to heart attacks." Dr. Hawk could not blame Claimant's heart attack on Claimant's hypertension and diabetes alone. He did agree that if Claimant had not had hypertension, diabetes, and coronary disease, Claimant's risk for a heart attack would have been substantially decreased.

In response to Claimant's attorney, Dr. Hawk agreed that Claimant's "sudden exertion... precipitated the heart attack." Dr. Hawk believed that to be true within a reasonable degree of medical certainty.

Turning to the question of the extraordinary and unusual nature of Claimant's activity on the morning of December 26, 2002, Claimant testified that he could only remember one other instance of having to "dolly up" a trailer in his over-forty years of truck driving. He testified that this activity was unusual, and certainly not

anything that he predicted. Claimant testified that he would occasionally help unload a trailer, but that his activity on December 26, 2002 was more demanding. On the ordinary occasion when he was backing a truck under or driving a truck away from a trailer, Claimant might need to “dolly” the trailer a few inches. He insisted that this procedure was “nothing like that out there on the road.” When Claimant dropped off a trailer, he would have to crank the dollies one or two inches; on the other hand, on December 26, 2002, the dollies needed to be cranked at least a couple of feet.

Claimant must satisfy Ark. Code Ann. § 11-9-114 in order to demonstrate that his December 26, 2002 myocardial infarction is compensable. The statute requires a claimant to show that his accident is the major cause of his harm and that the work precipitating the injury was extraordinary and unusual in comparison to his regular employment. See Huff Serv. First v. Ledbetter, 76 Ark. App. 533, 542, 69 S.W.3d 449, ___ (2002). As to the “major cause” requirement, the statute provides:

(a) A... myocardial infarction causing injury, illness, or death is a compensable injury only if, in relation to other factors contributing to the physical harm, an accident is the major cause of the physical harm.

Ark. Code Ann. § 11-9-114(a).

Applying the major cause requirement to this case, Claimant must demonstrate that an accident is the major cause of his myocardial infarction, the physical harm that he suffered. “Major cause” means more than fifty percent of the cause. Huff Service, 76 Ark. App. at 542, 69 S.W.3d at ___; Ark. Code Ann. § 11-9-102(14)(A). It does not suffice to prove that an accident “precipitates” the physical harm, or is a “causative factor” giving rise to the physical harm. Collins v. City of Farmington, Full Workers’ Compensation Commission Opinion filed July 16, 1998

(E605492); Couch v. Arkansas State Police, Full Workers' Compensation Commission Opinion filed June 18, 1998 (E500890).

If the General Assembly so chose it could have required an accident to be the precipitating cause as opposed to the major cause. It did not do so. Precipitating cause and major cause simply are not the same.

Collins v. City of Farmington, *supra*.

Claimant must prove that his accident was the major cause of his myocardial infarction by a preponderance of the evidence. Ark. Code Ann. § 11-9-102(14)(B); see Stapleton v. DMT Services, Inc., Full Workers' Compensation Commission Opinion filed February 4, 2000 (E807564). "Preponderance of the evidence" means evidence of greater convincing force; the term does not mean preponderance in amount, but implies an overbalancing in weight. Smith v. Magnet Cove Barium Corp., 212 Ark. 491, 496-97, 206 S.W.2d 442, ___ (1947).

It is the Commission's function to determine the credibility of witnesses and the weight to be given their testimony. City of Blytheville v. McCormick, 56 Ark. App. 149, 152, 939 S.W.2d 855, ___ (1997). The Commission has the duty of weighing medical evidence and, if the evidence is conflicting, its resolution is a question of fact for the Commission. *Id.* at 152. Expert opinions are to be judged upon their entirety, and they are not validated or invalidated on the presence or lack of "magic words." Wackenhut Corp. v. Jones, 73 Ark. App. 158, 162, 40 S.W.3d 333, ___ (2001).

Although this is a close question, I find that Claimant has not met his burden of proving by a preponderance of the evidence that his accident was the major cause of his myocardial infarction. It is undisputed that Claimant suffered a heart attack while engaged in work activities on December 26, 2002. However, considering

Claimant's medical history and the deposition of Dr. Davis, Claimant has not established, by the evidence of greater convincing force, that his accident was the major cause of his myocardial infarction.

The record establishes that Claimant had coronary artery disease prior to December 26, 2002. Dr. Davis noted the presence of this disease prior to Claimant's accident. Claimant also labored under the presence of several risk factors for coronary artery disease: hypertension, diabetes, a history of smoking, and a family history of heart attack. Dr. Davis specifically affirmed that the two incidents of occlusion to Claimant's right coronary artery were precipitated by Claimant's hypertension and diabetes. When asked "What role did his coronary artery disease play in the heart attack?", Dr. Davis responded: "Well, I mean that is his diagnosis, so he has coronary artery disease, and that is why he had the heart attack."

In the absence of convincing medical proof to the contrary, the preexistence of coronary artery disease or risk factors for heart attack generally make it difficult for a claimant to prove that his accident is the major cause of his heart attack. Compare Huffy Serv. First v. Ledbetter, 76 Ark. App. 533, 69 S.W.3d 449 (2002) (no evidence of preexisting heart disease; holding for claimant); Williford v. City of North Little Rock, 62 Ark. App. 198, 969 S.W.2d 687 (1998) (discounting prior history in light of doctor's emphatic statement concerning causation; holding for claimant); City of Blytheville v. McCormick, 56 Ark. App. 149, 939 S.W.2d 855 (1997) (doctor testified that the accident was the major cause of the heart attack, with all other factors combined amounting to less than 10% by comparison; holding for claimant); Lovelace v. Dollarway School District, Full Workers' Compensation Commission Opinion filed March

3, 2004 (F106668) (finding claim compensable; claimant had no real history of heart problems, was not on medication, and was active); with Stapleton v. DMT Services, Inc., Full Workers' Compensation Commission Opinion filed February 4, 2000 (E807564) (evidence indicated that claimant's preexisting cardiovascular condition was the major cause of the myocardial infarction; claim denied); Couch v. Arkansas State Police, Full Workers' Compensation Commission Opinion filed June 18, 1998 (E500890) (emotional stress and claimant's preexisting coronary artery disease were the major cause of his myocardial infarction; claim denied); and Collins v. City of Farmington, Full Workers' Compensation Commission Opinion filed July 16, 1998 (E605492) (claimant's heart was so far compromised by preexisting disease that claimant was likely to experience a myocardial infarction at any time; claim denied).

I further find that Dr. Davis' deposition testimony is credible and entitled to greater weight than the two statements he signed dated October 7, 2003. Both statements reach conclusions without explanation, emphasize "magic words," and do not greatly assist in understanding Claimant's condition. On the other hand, his deposition permitted Dr. Davis to explain and explore Claimant's condition in detail.

Dr. Davis' deposition testimony does not support a finding that Claimant's accident was the major cause of his myocardial infarction. He refers to Claimant's "previously diagnosed hypertension and diabetes that were defined as a major cause of the event." When asked what the role the coronary artery disease played in Claimant's heart attack, Dr. Davis responded that "I mean that is his diagnosis, so he has coronary artery disease, and that is why he had the heart attack." He agreed that Claimant's hypertension, diabetes, and coronary artery disease were contributing factors to

Claimant's myocardial infarction, and that Claimant would have been less susceptible to the heart attack without these preexisting conditions. Dr. Davis was specifically asked: "Would it be fair to say that [Claimant's] preexisting hypertension, diabetes, coronary artery disease were a significant and major cause of his myocardial infarction on 12/26/02?" Dr. Davis responded: "That is a correct statement."

Although some of Dr. Davis' statements appear to support Claimant, upon closer inspection that turns out not to be the case. Dr. Davis was specifically asked whether Claimant's work activities on December 26, 2002 were the major cause of his medical treatment and disability. Dr. Davis responded: "This is a semantics thing, but it was in performing his duties that he had the myocardial infarction event which then led to his medical treatment." This statement attributes some degree of causation to Claimant's work activities, but does not clearly characterize the work activities as the major cause. When Claimant's attorney questioned Dr. Davis, he agreed with her question that the work activity "was the precipitating factor that caused the rupture...." She asked: "And in precipitating, at least as far as needing treatment on that day, more than 51 percent was the reason with the exertion?" Dr. Davis responded: "I agree." This testimony establishes that the work activity precipitated the myocardial infarction. However, a precipitating cause does not meet the statute's requirement of a major cause. See Collins v. City of Farmington, supra.

I find that Dr. Hawk's deposition testimony is entitled to less weight than Dr. Davis' deposition testimony. Dr. Davis is a cardiologist; Dr. Hawk is a general practitioner, and he acknowledged Dr. Davis' greater expertise on cardiology issues. For that reason, and for the same reasons that the statements signed by Dr. Davis were

accorded little weight, I also find that Dr. Hawk's statement checked August 21, 2003 is entitled to little weight.

Nonetheless, Dr. Hawk acknowledged that if Claimant's diabetic condition remained uncontrolled, it could perhaps lead to atherosclerosis or hardening of the arteries. While Dr. Hawk could not blame Claimant's heart attack on his preexisting hypertension and diabetes alone, he did agree that if Claimant had not had these preexisting conditions, Claimant's risk for a heart attack would have been substantially decreased. In response to Claimant's attorney, Dr. Hawk agreed that Claimant's "sudden exertion... precipitated the heart attack." But again, precipitation is not sufficient to establish major cause.

The evidence of greater convincing force does not establish that Claimant's accident was the major cause of his myocardial infarction. He suffered from preexisting coronary artery disease; his medical history indicated the presence of several risk factors for heart problems, including hypertension and diabetes. At best, Claimant's attending cardiologist, Dr. Davis, could testify that the work activities precipitated the myocardial infarction; but he confirmed that Claimant's preexisting hypertension, diabetes, and coronary artery disease were significant and major causes of the myocardial infarction.

Claimant's failure to satisfy the major cause requirement means that his myocardial infarction is not compensable under Ark. Code Ann. § 11-9-114. Therefore, his claim for temporary total disability and medical benefits must be denied, as well as his request for an attorney's fee.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The stipulations agreed upon by the parties are reasonable and are approved.
2. The employee/self-insured employer relationship existed at all relevant times.
3. Claimant failed to prove by a preponderance of the evidence that his accident on December 26, 2002 was the major cause of his myocardial infarction, as required by Ark. Code Ann. § 11-9-114(a). Medical testimony demonstrates that Claimant's preexisting coronary artery disease, hypertension, and diabetes were the major cause of his myocardial infarction and that his accident precipitated the myocardial infarction.
4. Because Claimant failed to prove a compensable injury under Ark. Code Ann. § 11-9-114, his request for temporary total disability and medical benefits, as well as an attorney's fee, must be denied.

ORDER

Claimant has failed to sustain his burden of proving that he suffered a compensable injury. Therefore, the above claim is respectfully denied and dismissed

IT IS SO ORDERED.

D. FRANKLIN AREY, III,
Administrative Law Judge

DFA/ml