

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F307554

ADAM J. McCORKLE, EMPLOYEE	CLAIMANT
MAVERICK TUBE, EMPLOYER	RESPONDENT
CROCKETT ADJUSTMENT, INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED FEBRUARY 24, 2004

Hearing before Chief Administrative Law Judge David Greenbaum on January 16, 2004, at Osceola, Mississippi County, Arkansas.

Claimant appeared, *pro se*.

Respondents represented by Mr. John D. Davis, Attorney-at-Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted January 16, 2004, to determine whether the claimant sustained a compensable injury within the meaning of the Arkansas Workers' Compensation Laws.

A prehearing conference was conducted in this claim on December 30, 2003, and a Prehearing Order was filed December 31, 2003. At the hearing, the parties announced that the stipulations, issue, as well as their respective contentions were properly set out in the Prehearing Order. A copy of the Prehearing Order was introduced as "Commission's Exhibit 1" and made a part of the record without objection.

It was stipulated that the employment relationship existed at all relevant

times, including June 16, 2003; that the claimant's average weekly wage was \$400.00, entitling him to a compensation rate of \$267.00 per week for temporary total disability and \$200.00 per week for permanent partial disability; and that the claim had been controverted in its entirety.

The sole issue presented for determination concerned compensability. If overcome, claimant's entitlement to associated benefits must be determined.

Claimant contended, in summary, that he sustained a compensable injury on June 16, 2003, in the form of heat exhaustion or heat stroke due to exposure to heat and working conditions, while, at the same time maintaining that sufficient breaks were not given and no water provided by the employer, resulting in his becoming dehydrated, and requiring medical treatment. The claimant requested that the respondents be held responsible for outstanding medical expenses incurred in the amount of approximately \$1,500.00. The claimant did not seek any indemnity benefits. Prior to the hearing, the claimant submitted an itemization of medical expenses reflecting bills totaling \$2,391.71. (Cl. Ex. 1)

The respondents contended that the evidence would show that the claimant reported to work on June 16, 2003, complaining that he was sick as the result of drinking alcohol the prior weekend, maintaining that claimant's physical problems on June 16, 2003, were related to his drinking and not to his work; and that claimant did not sustain a compensable injury at work on June

16, 2003, within the meaning of Ark. Code Ann. §11-9-114.

In addition to the claimant, his mother, Stacy McCorkle and a friend, Dillon Taylor, were called as corroborating witnesses. Stacy Whitfield, Ronnie Southern, and Steven Vancleve were called as witnesses by the respondents. The record is composed solely of the transcript of the January 16, 2004, hearing containing several exhibits.

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 witnesses and to observe their demeanor, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. §11-9-704:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations agreed to by the parties are hereby accepted as fact.
3. The claimant has proven, by a preponderance of the credible evidence, that he sustained a compensable injury arising out of and during the course of his employment with Maverick Tube, specifically, a heat stroke resulting in his becoming dehydrated and requiring medical services. The work-related heat stroke was the major cause of the claimant's injury and need for treatment, and was an unusual and unpredicted incident

within the meaning of A.C.A. §11-9-114.

4. Respondents have controverted this claim in its entirety.

DISCUSSION

Apparently, respondents do not dispute that the claimant sustained an injury on June 16, 2003, supported by objective medical findings, as confirmed by emergency room records on said date reflecting that the claimant was found to be suffering from dehydration, secondary to working conditions. It was respondents' position that the claimant's dehydration was related to drinking the prior weekend, rather than working conditions and the heat, contending that medical opinion was based upon an incorrect history that the claimant had nothing to drink which respondents maintained was clearly inaccurate.

(Tr.98)(Jt. Ex. A, p.1)

Ark. Code Ann. §11-9-114 (Repl. 2002) provides:

(a) A cardiovascular, coronary, pulmonary, respiratory, or cerebrovascular accident or 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.

(b)(1) *An injury or disease included in subsection (a) of this section shall not be deemed to be a compensable injury unless it is shown that the exertion of the work necessary to precipitate the disability or death was extraordinary and unusual in comparison to the employee's usual work in the course of the employee's regular employment or, alternatively, that some unusual and unpredicted incident occurred which is found to have been the major cause of the physical harm.*

(2) Stress, physical or mental, shall not be considered in determining whether the employee or claimant has met his or her burden of proof. (Emphasis supplied)

Many relevant facts are basically undisputed. The claimant, Adam J. McCorkle, is nineteen (19) years old. He began working for the respondents on June 16, 2003. The claimant's job duties consisted primarily of heavy, manual labor, specifically , repetitively lifting boards, 4" x 4" , approximately ten feet long. The claimant's description of the work, as well as his physical problems performing his job, is set out, in part, below :

Q ... but this was the first day that you were on the job?

A Yes.

Q And you reported to work at 6:00 o'clock, and again you say for the first couple of hours, what happened now?

A I was fine for the first couple of hours. It was a cool morning.

Q What were you doing, though, during those first couple of hours?

A I was throwing boards up on top of the pipes and then jumping –

Q And those boards are four by fours?

A Four by fours, and most of them was about ten foot long and some of them were busted. We was –

Q Well, okay. Four by fours ten foot long are not light weight. I mean, I'm not in the carpentry business, but I do know a four by four ten foot long has some weight to it. I couldn't even estimate what it is. Do you have an idea what they weigh?

A No, sir, I wouldn't have a clue.

Q Again, were you putting these boards up there by yourself or was there somebody assisting you?

A Well, for the first two hours when I had my trainer, he was helping me.

Q Okay. Somebody was training you and helping you put the boards up there?

A For about two to two and a half hours.

Q Okay, and, again, what would you estimate these boards weigh?

A I'd say 20 pounds, I guess, 20, 30 pounds, something like that. I don't know.

Q I would estimate them to weigh more than that, but, okay, 20 to 30 pounds. And what happened after two and a half hours?

A Well, I started feeling sick. I was sweating the whole time and –

Q I mean, how many boards are we talking about here?

A For each layer of pipes, we had to have four boards across the pipes.

Q Okay. So you put four boards across the pipes, and then what happens after you put the four boards down?

A They bring the lift truck in, let the pipes roll down on top of the boards. They close the lift, hold the pipes, and then I nail a chock in all four boards to keep the pipes from rolling back off the tier.

Q And then do you start again putting four boards on there?

A And they stack – we keep stacking them up. Once they get tall enough to where I can't reach them, I have to climb up the boards because there's about that much board sticking out.

Q The record won't say what this much is, so –

A There's probably about a foot of board sticking out of the pipes, and I had to climb them up to however tall the pipes were and then nail a chock on the boards.

Q When you say nail a chock, what are you talking about?

A Nail a triangled piece of wood on the board in the chock – I mean, on the pipes so the pipes will not roll off.

Q Okay. And, again, after the first couple of hours you say – did your trainer leave the jobsite and you continued to do this work on your own?

A For the most part, yes.

Q Okay. How fast or how slow is this activity being performed?

A As quick as I chock the pipes, they go back and get more pipes and –

Q And while they are going back and getting more pipes –

A I'm throwing other four by fours up there, getting them ready for him to drop the pipes again on the next –

Q And how much time normally lapses between the time you throw four boards on there and they bring another load of pipes?

A The majority of the time he had to wait for me to put the boards up there is how long it took. It was probably about 40 to 50 seconds or probably about a minute or so.

Q So you are telling me that they can actually bring another load of pipes quicker than you can put the four boards on top of

the pipes?

A Quicker than I could, yes, sir.

Q Okay.

A That's quite a bit of load for me to be picking up and throwing up there nonstop.

Q All right. And so basically you are throwing four four by fours on top of these pipes, they drop another load, you put the chock on it. Then they go get another load, you put four more boards on there, and they bring more pipe. And this is a repeated activity, is that right?

A The entire time.

Q Okay. So tell us, when did you first start feeling bad?

A It was about 10:30 or 11:00 when I started feeling it, started feeling pretty sick.

Q And when you say sick, what do you mean by sick?

A My stomach was hurting. My head was hurting. I started getting – my body was shaking.

Q Okay. How long did you continue to work on June 16th of 2003?

A I worked all the way until 6:00 p.m. when my shift ended.

Q Okay. So even though you started feeling bad earlier in the day, you worked from 6:00 to 6:00? That's a 12 hour shift?

A Yes, sir.

Q And was your contract of hire to work 12 hour shifts?

A Yes, sir.

Q How many days a week?

A Seven.

Q Okay, but you only worked this one day?

A After I went to the hospital, he gave me two days off to rest, to push clear fluids and do the blood work, then he released me to go back to work that following Thursday.

Q Okay. Did you go back to work?

A I went back to work because I needed a job and it was good money. I was just hoping that was a fluke, and then I worked until about noon or so. I worked about a half a day and then I started feeling sick again, getting real shaky. I went to Larry Adams and told him that I could not physically do the work. (Tr.16-20)

The record reflects that the claimant turned 19 on Sunday, June 15, prior to reporting to work for the first time on Monday. Respondents called three (3) witnesses, primarily to establish that the claimant reported that he had been “partying” over the weekend and was not feeling well because he had been partying. Respondents’ witnesses also maintained that the claimant had been provided a water bottle on his first day at work, apparently, because the claimant contended that sufficient breaks were not given during the workday and that no water was provided by the employer, resulting in his becoming dehydrated, and requiring medical treatment. Although respondents contended that the claimant’s physical problems were the result of drinking alcohol the prior weekend rather than related to his work, there was no competent

evidence or testimony reflecting that the claimant indicated that he had been drinking while celebrating his birthday. To the contrary, the claimant and his corroborating witnesses pointed out that the claimant celebrated his birthday on Saturday and that he did not drink any alcohol on Saturday, and further the claimant's mother maintained that she was with her son the entire day on Sunday, and that he was not having any physical problems and was excited about his new job. The claimant had additional witnesses available to corroborate that he stayed home on Sunday which this administrative law judge felt was cumulative evidence and, therefore, said witnesses did not testify.

Again, none of respondents' witnesses stated that the claimant reported that he had been drinking. One of the respondents' witnesses, Steven Martin Vancleve, gratuitously stated that the claimant appeared "kind of weak and hung over," while acknowledging that the claimant worked a full 12-hour shift. I did not find Mr. Vancleve to be a credible witness. His testimony appeared to be vague, inconsistent and unresponsive. Further, it must be noted that respondents' witnesses contradicted portions of each other's testimony despite the fact that they were present for each other's testimony. Stacy Whitfield, the team leader and the claimant's immediate supervisor, stated that the claimant worked with two (2) separate trainers, John Shipley and then Mr. Vancleve on his first day at work, whereas Mr. Vancleve stated that he worked with the claimant all day. Ronnie Southern, the shipping supervisor, asserted

that David Pulliam gave the claimant a water cooler on his first day at work, which was likewise disputed by the claimant and was based upon hearsay testimony. In addition, Mr. Southern worked an 8:00 a.m. until 4:00 p.m. shift rather than the 6:00 a.m. to 6:00 p.m. shift worked by the claimant. Although considerable testimony was offered concerning whether the claimant was provided a water bottle the first day on the job, which, again, the claimant denied, this disputed factual determination is not critical to the decision reached herein.

The claimant is nineteen (19) years old. He is slightly built. It appears that this is the first physically demanding job that he has held. Although the claimant's mother encouraged him to drink fluids prior to going to work, there is no evidence that the employer stressed the importance of drinking plenty of water and taking frequent breaks during the work day. In fact, the undisputed evidence reflects that the claimant was only provided with two (2) breaks during a 12-hour work shift, a 30-minute lunch break, and another 30-minute break. Clearly, the claimant was not physically prepared for the rigors of a demanding job. After returning to work on Thursday, June 19, he worked approximately half a day, at which time he voluntarily terminated his employment, maintaining that he was physically unable to perform the work.

Respondents do not challenge the medical finding supported by objective medical evidence that the claimant required hospitalization and treatment for

dehydration. Rather, respondents maintain that the claimant's dehydration was related to drinking alcohol rather than his working conditions, contending that claimant did not sustain a compensable injury at work on June 16, 2003, within the meaning of A.C.A. §11-9-114.

Respondents' contentions are simply not supported by the record as a whole. In fact, there is no credible evidence that the claimant drank alcohol at any time contemporaneous to his suffering a heat stroke. The record reflects that the claimant worked a full 12-hour shift without sufficient breaks during the work day. Although there is conflicting evidence concerning whether or not the claimant was provided a water bottle and water, I am persuaded that even if water was provided, which is not conceded herein, nevertheless, the claimant failed to properly hydrate himself. Admittedly, his youth and lack of experience concerning the importance of frequent water breaks contributed to his injury; however, contributory negligence is not a defense to a workers' compensation claim. I specifically find that an unusual and unpredicted incident occurred on June 16, 2003, which is the major cause of the claimant's injury and need for medical treatment.

Admittedly, the claimant's injury did not fully manifest itself on the job site, but, rather, shortly after he arrived at home following a 12-hour work shift. It must be noted that, in the present case, respondents do not contend that the claimant cannot prove a specific incident injury or a gradual onset injury as the

result of rapid repetitive job duties. However, the Arkansas Court of Appeals has held that the exact time and place is not required to satisfy the specific incident requirement identifiable by time and place of occurrence within the meaning of A.C.A. §11-9-114 and that a medical finding, combined with unusual working conditions satisfies the requirements of a specific incident. *Huffy Service First vs. Ledbetter*, 76 Ark. App. 533, 69 S.W.3d 449 (2002). See also, *Creech vs. Reliance Well Service, Inc.*, WCC #F100288, Full Commission Opinion filed October 24, 2002; *Moody vs. Beverly Health Care*, WCC #F105139, Full Commission Opinion filed October 18, 2002.

It is well-settled that claimant has the burden of proving the job-relatedness of any alleged injury, without the aid of any kind of presumption in his favor. *Pearson vs. Faulkner Radio Service*, 220 Ark. 368, 247 S.W.2d 964 (1952); *Farmer vs. L.H. Knight Company*, 220 Ark. 333, 248 S.W.2d 111 (1952). The burden of proof claimant must meet is preponderance of the evidence. *Voss vs. Ward's Pulpwood Yard*, 248 Ark. 465, 425 S.W.2d 629 (1970). Under prior law, it was the duty of the Commission to draw every legitimate inference in favor of the claimant and to give claimant the benefit of the doubt in making factual determinations. However, current law requires that evidence regarding whether or not claimant has met his burden of proof be weighed impartially, without giving the benefit of the doubt to either party. Arkansas Code Annotated §11-9-704(c)(4); *Wade vs. Mr. C. Cavanaugh's*,

298 Ark. 363, 768 S.W.2d 521 (1989); Fowler vs. McHenry, 22 Ark. App. 196, 737 S.W.2d 663 (1987).

After review the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that the claimant has proven, by a preponderance of the credible evidence, that he sustained a compensable injury arising out of and during the course of his employment with Maverick Tube on June 16, 2003, entitling him to related medical treatment.

AWARD

Respondents, Maverick Tube and Crockett Adjustment, is hereby directed and ordered to pay and/or reimburse the appropriate medical providers for all outstanding hospital, medical and related expenses as the result of claimant's June 16, 2003, injury. Said medicals are to be paid pursuant to the medical cost containment provisions of Commission Rule 30.

IT IS SO ORDERED.

DAVID GREENBAUM
Chief Administrative Law Judge