

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F306749

PERRY L. REED, EMPLOYEE	CLAIMANT
MCGEORGE CONTRACTING COMPANY, EMPLOYER	RESPONDENT
TRAVELERS INSURANCE COMPANY, CARRIER	RESPONDENT

OPINION FILED JULY 2, 2004

Submitted on the record on July 1, 2004 in lieu of a full hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN.

Claimant represented by the HONORABLE JOHN L. KEARNEY, Attorney at Law, Pine Bluff, Arkansas.

Respondents represented by the HONORABLE GUY A. WADE, Attorney at Law, Little Rock, Arkansas.

ISSUES

This claim was submitted on the record in lieu of a full hearing to determine the claimant's entitlement to payment of additional medical expenses, temporary total disability benefits and attorney's fees.

At issue is whether or not the claimant sustained a compensable injury (stroke) as defined by Ark. Code Ann. §11-9-114.

After reviewing the evidence impartially without giving the benefit of the doubt to either party, Ark. Code Ann. §11-9-704, I find the evidence does not preponderate in favor of the claimant.

STATEMENT OF THE CASE

The parties stipulated to an employer-employee-carrier relationship on July 22, 2002 at which time the claimant sustained a compensable back injury at a compensation rate of \$425.00/\$319.00. Medical expenses and temporary total disability benefits (until June 9, 2003) have been paid.

The claimant contends that he suffered a stroke as a compensable consequence of treatment for his back injury. The claimant seeks payment of medical expenses, temporary total disability from July 23, 2002 to a date yet to be determined, and attorney's fees.

The respondents contend the stroke is unrelated to the compensable injury and the major cause was related to factors other than work.

The following were submitted without objection and comprise the evidence of record: the parties' prehearing questionnaires and exhibits, Dr. Schmidley's curriculum vitae and Dr. Rutherford's report of June 15, 2004.

The claimant, age 50 (D.O.B. July 13, 1954) was a heavy equipment operator for the respondent-employer when he injured his back at L5-S1 on July 22, 2002. He developed low back and right leg pain and came under the care of Dr. Ron Williams who performed surgery. A Functional Capacity Test was performed on October 28, 2002 recommending that he not return to work driving a bulldozer. A twenty pound lifting limitation was imposed limiting the claimant to sedentary work. The therapist also recommended "skilled physical therapy intervention or a referral to a specialist for pain management" due to his "significant physical limitations."

The claimant remained symptomatic after surgery and saw Dr. Reginald Rutherford on March 3, 2003. His report indicates Dr. Williams advised the claimant to apply for Social Security Disability. Dr. Rutherford also noted a family history of heart disease and the claimant's thirty year history of smoking one pack of cigarettes per day.

Dr. Rutherford recommended a work hardening program, medication and an inferential stimulator. The work hardening program began on March 11, 2003. The claimant called Dr. Rutherford's office on March 17, 2003 complaining of memory loss and difficulty performing simple

tasks. He was advised to discontinue Neurontin.

On March 20, 2003 the claimant reported to Health South for the work hardening program with complaints of not feeling well and pain on the right side of the body. His blood pressure was elevated and the workout was stopped because of his continued complaints. After he returned home his symptoms persisted and he went to the emergency room where he was diagnosed with a cerebrovascular accident (CVA) or stroke. The claimant developed numbness in the left side of his face and in his left arm.

The stroke was confirmed by abnormalities seen on an MRI and CT scan of the brain and an abnormal carotid doppler. Specifically, the claimant was diagnosed with “ischemia of uncertain chronicity”, “moderate but nonsurgical stenosis,” high cholesterol and high blood pressure. The claimant quit smoking and began taking medication.

Although the claimant had several risk factors for stroke (high cholesterol, high blood pressure, smoking), Dr. Rutherford concluded that because the claimant’s blood pressure was normal prior to the injury, the compensable back injury resulted in chronic pain which elevated his blood pressure and caused a stroke. Dr. Rutherford considered the claimant permanently and totally disabled and urged him to apply for Social Security Disability.

Dr. Rutherford’s Report of March 25, 2003:

It is not certain at this juncture whether or not Mr. Reed’s spinal injury and chronic pain are a factor in his hypertension. He reports that he has undergone three comprehensive physicals prior to his injury which did not demonstrate any evidence for hypertension. Hypertension is clearly documented post-injury. Mr. Reed will obtain the above medical documentation through Concentra where the physicals were performed. If there is no antecedent hypertension, then I would attribute this problem to his injury and chronic pain.

Dr. Rutherford's Report of June 15, 2004:

Mr. Reed's stroke is multifactorial in origin including hypertension and hyperlipidemia. His back pain may have contributed to hypertension.

The claimant's medical records were also reviewed by Dr. James Schmidley, Professor of Neurology at UAMS and Dr. Dean Wampler, board certified in occupational medicine and independent medical evaluation. Both Dr. Schmidley and Dr. Wampler agree that there is no proven correlation between chronic pain and hypertension.

Dr. Schmidley's Report of April 26, 2004:

A proximate cause of the cerebral infarct was not determined, no cardiac source of emboli was discovered; ultrasounds of the carotid arteries did not demonstrate severe stenosis.

Mr. Reid does have risk factors for stroke: Hypertension, a 30 year history of cigarette use and hyperlipidemia. All of these factors probably contributed to his stroke.

As to the contention that Mr. Reid's back injury induced hypertension, which then caused the stroke, there is no credible evidence in medical literature that chronic pain leads to hypertension. Hypertension is the most prevalent chronic disease in the United States. Its existence in a patient with chronic pain in no way establishes a cause and effect relationship. In my opinion, to a high degree of certainty, there is no relation whatsoever between the back injury sustained in 2002, and the stroke sustained about 9 months later.

Dr. Wampler's Report of September 9, 2003:

It is my opinion, stated with a reasonable degree of certainty, and supported by research of the potential causes of stroke; that Mr. Reed's CVA on March 20, 2003 was the end result of progressive cerebrovascular disease induced by long-standing high cholesterol and 30 pack (sic) - years of smoking cigarettes.

Mr. Reed's high blood pressure was a recent development before his CVA and the marked elevation of pressure noted on March 20, 2003

was his body's response to the stroke itself, rather than the cause of it.

My opinions are supported by the following facts:

1. While Mr. Reed apparently did not have high blood pressure before work injury on 7/22/02 he developed the condition gradually and within a few months before a stroke.
2. High blood pressure can lead to stroke, but hypertension is a risk factor that takes many years to develop into a causative factor for cerebrovascular event. Even if Mr. Reed had high blood pressure for six months, the condition had not been present long enough to cause his thrombotic stroke.
3. If severe high blood pressure was the cause of Mr. Reed's stroke on 3/20/03, he should have experienced a hemorrhagic stroke, rather than the thrombotic event he suffered.
4. Mr. Reed's brain CT scan showed evidence of several small strokes of variable age. This indicates his condition had been developing over a long period of time, and was most likely caused by the long-term effects on blood vessels induced by high cholesterol and smoking for 30 years.
5. The medical literature confirms that chronic pain of any type does NOT cause high blood pressure or strokes.

FINDINGS AND CONCLUSIONS

As this claim arose after July 1, 1993, this case is governed by Act 796 of 1993 which must be strictly construed, Ark. Code Ann. §11-9-704, §11-9-717.

For the claimant to prevail, he must prove the following by a preponderance of the evidence of record:

Ark. Code Ann. §11-9-114:

(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, alternately, 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.

There does not appear to be any specific accident or unusual work that caused the claimant's stroke. The claimant's compensable accident was some eight months before the stroke and he had been participating in the work hardening program for several days before the stroke. The issue, as framed by the physicians, is whether or not chronic pain caused hypertension which in turn, caused the stroke.

The claimant also has the burden of proof regarding a compensable consequence:

Where a primary injury is shown to have arisen out of and in the course of employment, the employer is responsible for any natural consequence that flows from the injury, and the basic test is whether there is a causal connection between the two episodes. Wackenhut Corporation v. Jones, 73 Ark. App. 158, 40 S.W.3d 333 (2001), Jeter v. B.R. McGinty Mech., 62 Ark. App. 53, 968 S.W.2d 645 (1998).

A stroke is not a natural consequence of a back injury. Two physicians have opined that there is no correlation between chronic pain and hypertension. The evidence shows the claimant's stroke was caused by a combination of health risks from high cholesterol, high blood pressure and a thirty year cigarette habit.

Drs. Schmidley and Wampler were unequivocal in their opinions while Dr. Rutherford indicated there “may” be a correlation between hypertension and chronic pain. A doctor’s opinion must be stated with some definiteness in order to prove causation. Frances v. Gaylord Container Corp., 341 Ark. 527, 20 S.W.3d 280 (2000). Wackenhut, supra, Crudup v. Regal Ware, Inc., 341 Ark. 804, 20 S.W.3d 900 (2000).

After considering the claimant’s health history and reviewing the expert testimony, I find the claimant has failed to meet his burden of proof by a preponderance of the evidence of record.

1. The Workers’ Compensation Commission has jurisdiction of this claim in which the employment relationship existed between the parties on July 22, 2002 at which time the claimant sustained a compensable back injury at a compensation rate of \$425.00/\$319.00. Medical expenses, and temporary total disability benefits (until June 9, 2003) have been paid.
2. The claimant has failed to prove by a preponderance of the evidence of record that he suffered a compensable stroke as a result of an accident or unusual work pursuant to Ark. Code Ann. §11-9-114.
3. The claimant has failed to prove by a preponderance of the evidence of record that the stroke he suffered was a compensable consequence of chronic pain and hypertension.

This claim for additional benefits is respectfully denied and dismissed.

IT IS SO ORDERED.

ELIZABETH W. HOGAN
Administrative Law Judge