

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F401831

DAVID E. SIMS, EMPLOYEE	CLAIMANT
AMERICAN RAILCAR INDUSTRIES, EMPLOYER	RESPONDENT
SPECIALTY RISK SERVICES, INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED SEPTEMBER 1, 2004

Hearing before Chief Administrative Law Judge David Greenbaum on July 23, 2004, in Jonesboro, Craighead County, Arkansas.

Claimant represented by Mr. John Barttelt, Attorney-at-Law, Jonesboro, Arkansas.

Respondents represented by Mr. Randy P. Murphy, Attorney-at-Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted July 23, 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 June 9, 2004, and a Prehearing Order was filed on June 10, 2004. At the hearing, the parties announced that the stipulations, issues, as well as their respective contentions were properly set out in the Prehearing Order subject to an additional stipulation relative to the applicable compensation rates, as well as a clarification by respondents concerning its contentions. 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 February 23, 2004; and that the respondents had controverted the claim in its entirety. At the hearing, the parties agreed that the claimant's average weekly wage was \$415.62, entitling the claimant to a compensation rate of \$277.00 per week for temporary total disability if the claim was found compensable.

By agreement of the parties, the primary issue presented for determination concerned compensability. If answered affirmatively, claimant's entitlement to associated benefits must be addressed.

Claimant contended, in summary, that he sustained a compensable head injury as the result of a fall at work on February 23, 2004; that he was entitled to temporary total disability from the date of the injury and continuing through the present, maintaining that his healing period had not ended; that respondents should be held responsible for outstanding medical and related treatment, together with continued, reasonably necessary medical treatment; and that a controverted attorney's fee should attach to any benefits awarded.

The respondents contended that the claimant did not sustain an injury arising out of and during the course of his employment. At the hearing, respondents acknowledged that the claimant fell at the workplace and sustained a head injury; however, maintained that the claimant sustained a

syncopal episode resulting in an idiopathic fall and injury rather than a work-related fall. (Tr.15-16)

The record in this case is composed solely of the transcript of the July 23, 2004, hearing containing a joint medical exhibit consisting of fifty-five (55) pages.

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. On February 23, 2004, the claimant sustained an injury to his head, specifically, a skull fracture of the right temporal bone with subdural hematoma.
4. The claimant's injury resulted from an idiopathic fall at work.
5. Even if the claimant sustained a compensable injury, which is not conceded herein, the claimant has failed to prove entitlement to temporary total disability after March 9, 2004, due to a lack of medical

documentation subsequent to said date.

6. Respondents have controverted this claim in its entirety for purposes of attorney's fees.

DISCUSSION

_____The claimant, David Sims is forty-five (45) years old. On and before February 23, 2004, the claimant was employed as a welder by American Railcar Industries. The claimant worked for the employer approximately seven (7) weeks before falling off a steel beam and sustaining a skull fracture on February 23, 2004. The claimant's description of his job activities on February 23, 2004, is extremely hard to conceptualize. The claimant, at all times, maintained that he was unaware of the reason for his fall and resulting head injury. The claimant's description of his activities and the event surrounding his injury is set out below:

Q Kind of walk us through that day. What time did you get to work that day?

A 7:00 a.m.

Q And very briefly, very quickly, just kind of walk us through the first hour of the day, and then tell us how you were injured.

A We started building the first car, and our lead man wasn't at the job that day. We was putting the first frame together, the undercarriage frame.

Q Now, this is of a railcar?

A Yes.

Q You all build railroad cars there?

A Yes, sir.

Q Okay.

A We do the undercarriage frame on our stuff, and we was assembling it. I was down to my last weld, and I stood up to turn around to reposition myself to make another weld, and I don't know what happened after that.

Q Okay. Let's back up just a little bit. You are working on the undercarriage of a railroad car?

A Yes, sir.

Q How large is the undercarriage itself? What do you mean by the undercarriage?

A The frame that the car runs on.

Q In my mind I'm thinking of something 90, 100 feet long?

A Seventy-three foot long.

Q Seventy-three feet long?

A Yes, sir.

Q All right. And is it on what type of – what is it on? Is it on the table? Is it on tracks? I mean, it doesn't have the wheels on it yet at that point, correct?

A Yes, it's on a jig.

Q On a jig?

A A table jig.

Q A table jig. Describe to me what a table jig is. I don't know.

A It's a component where you put your mainframe on the beam into the jig and it sits down inside of the jig, and it's got certain places where you sit in it.

Then it's got everything set up where that you put your frame pieces together on it, and you just go against what the jig is already premade to, so there's no mistakes made.

Q So this frame is set down on this jig?

A Yes.

Q And do you stand up on the frame or on the jig to do the welding?

A Sometimes. Sometimes we crawl under them and on top of them, yes.

Q The last thing you remember on February 23 were you under it or on top of it?

A I was on top of it.

Q Now, what are you actually standing on when you are on top of it?

A I stand on approximately a two foot wide beam that we –

Q Is that a steel beam?

A Yes, that we put all the other pieces to.

Q That steel beam would comprise primarily what is the undercarriage or frame of a railroad car?

A Yes, sir.

Q Such as a boxcar or flatcar or something of that nature?

A A flatcar, yes.

Q Two feet wide?

A Yes, sir.

Q And then what is your job as a welder? What do you do once you stand up on that two feet wide frame or that two feet wide steel beam?

A Part of it is welded from walking on the floor and crawling under it, and then when you do your finish welds, the last weld that is left is on top of the beam. So you sit on top of the beam or crawl across the top of the beam or walk down the beam and build each component.

Q What is the last thing you remember? Were you standing? Were you sitting? What's the very last thing you remember on February 23, 2004?

A I remember standing up?

Q You remember standing up?

A Yes, sir.

Q So you had been what, sitting?

A Sitting.

Q And if it's two feet wide, I'm assuming – well, I don't know, I'm going to ask. Do you straddle it when you sit down or do you sit sideways? Kind of explain how you would sit on this two feet wide beam.

A Well, I was sitting on a side rail that I had welded to it, and then I got up off the beam so I could weld the vees on the top of the beam, the two foot beam.

Q Okay.

A And that's when I stood up and turned around.

Q So when you said you sat on it, were your feet dangling?

A Yes, sir.

Q When you sit on the beam, how high is the beam up off the floor?

A Approximately three feet.

Q The beam itself, once it's on that jig, is three feet off the floor?

A Yes, approximately three feet.

Q So your feet are dangling, your feet aren't actually touching the floor at that point in time?

A No, not when you are sitting on it.

Q And what type of weld were you making when you were sitting on the beam?

A I was attaching a canton bearing beam to the main beam.

Q Are you bent over?

A Yes, somewhat.

Q Somewhat?

A Uh-huh.

Q Describe what you are wearing on that day while you are doing this.

A A hard hat, a welding hood, sleeves, welding gloves, and on that particular day a coat.

Q It was in February?

A That I remember, yes.

Q About what temperature do they keep the plant when you are in there about that time of year?

A I'd say 50 degrees, around 50 degrees.

Q So you are wearing a coat?

A Yes.

Q And you said you were somewhat bent over. Everybody can see you as you are sitting there right now. Are we talking about kind of like you are sitting now, or were you bent over a little bit more than you are now?

A Probably a little bit more than what I am now.

Q And you finished that weld and you started to stand up?

A Yes, sir.

Q That's the last thing you remember, is that what I understand?

A Yes, sir.

Q Where were you when you woke up?

A I was in the hospital.

Q Which hospital?

A At Paragould.

Q Methodist Hospital in Paragould, Arkansas?

A Yes, sir. (Tr.8-13)

On direct-examination, the claimant again stated that he did not know what happened that caused him to fall. He specifically denied ever experiencing any prior episodes of fainting or blacking out. The claimant also testified that he did not recall providing any information to the emergency room personnel concerning a syncopal episode at work which was contained in the hospital records, and, further, could not explain how the hospital obtained other prior medical problems and history which were contained in the emergency room records while, at the same time, recalling that his wife and step-daughter were both at the hospital when he was admitted. (Tr.27-30)

For an employee's injury to be compensable under the Arkansas Workers' Compensation law, it must result from an injury arising out of and in the course

of the employment. An injury occurs in the course of employment when it occurs within the time and space boundaries of the employment, while the employee is carrying out the employer's purpose, or advancing the employer's interest directly or indirectly. *City of El Dorado vs. Sartor*, 21 Ark. App. 143, 729 S.W.2d 430 (1987). The phrase "arising out of the employment" refers to the origin or cause of the accident, so it must be shown that a causal connection exists between the injury and the employment. *Gerber Products vs. McDonald*, 15 Ark. App. 226, 691 S.W.2d 879 (1985). In order for an injury to arise out of the employment, it must be a natural or probable consequence or incident of the employment and a natural result of one of its risks. *J & G Cabinets vs. Hennington*, 269 Ark. 789, 600 S.W.2d 916 (Ark. App. 1980).

When an employee sustains an "unexplained" injury at work, the injury is compensable. By contrast, when an employee sustains an "idiopathic" injury at work, the injury is, generally, not compensable because the injury is personal in nature and therefore does not arise out of and in the course of employment. See, generally, *ERC Contractor Yard & Sales vs. Robertson*, 335 Ark. 63, 977 S.W.2d 212 (1998); *Little Rock Convention & Visitors Bureau vs. Pack*, 60 Ark. App. 82, 959 S.W.2d 415 (1997). The Court of Appeals explained the distinction in *Moore vs. Darlington Store Fixtures*, 22 Ark. App. 21, 732 S.W.2d 496 (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 most courts confronted with that situation have seen fit to award compensation. 1 Larson, *The Law of Workmen's Compensation*, §10.31, at 3-87 (1985). 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. Larson, §12.11.

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 begin 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." Larson §12.11 at 3-314.

Moore, 22 Ark. App. at 25, 732 S.W.2d at 498.

Respondents' sole defense to this claim is that the claimant sustained an idiopathic fall and injury rather than a work-related or unexplained fall.

In support of respondents' contentions, it called Jerry Powers as a witness. Mr. Powers is the employer's safety administrator. Mr. Powers drove the claimant to the Methodist Hospital in Paragould, Arkansas, following the injury. In addition, he went to the Regional Medical in Memphis, Tennessee, after the claimant was transferred from the Methodist Hospital in Paragould. Mr. Powers stated that he met with the claimant's wife and step-daughter at the hospital where he was informed that the claimant had lost consciousness twice previously within the prior week. (Tr.55-56)

Both the claimant's wife, Katherine M. Sims, as well as claimant's step-daughter, Heather Metz, denied ever relating any prior syncopal episodes.

Suffice it to say that the testimony of the claimant and his corroborating witnesses concerning any prior episodes is inconsistent with the testimony of Mr. Powers. It is apparent that not all of the witnesses were truthful in their testimony.

A claimant's testimony is never considered uncontroverted. In fact, the testimony of an interested party is always considered to be controverted. *Lambert vs. Gerber Products Co.*, 14 Ark. App. 88, 684 S.W.2d 842 (1985); *Nix vs. Wilson World Hotel*, 46 Ark. App. 303, 879 S.W.2d 457 (1994); *Continental Express vs. Harris*, 61 Ark. App. 198, 965 S.W.2d 84 (1998).

Clearly, the claimant, as well as his family members who were called as corroborating witnesses, must be considered interested parties. An argument can be made that Mr. Powers, the employer's safety administrator, is an interested party; however, he does not have a direct pecuniary interest in the outcome of the litigation.

In addition to the testimony of Mr. Powers, the medical evidence contains a patient history of a syncopal episode at the workplace. The history was provided to medical personnel at both Arkansas Methodist Medical Center, as well as the Regional Medical Center at Memphis, Tennessee. (Jt. Ex. A, pp.16, 34, 38)

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).

The record in this case contains inconsistencies and contradictions. Although it is not unusual for medical records to contain inaccurate medical histories, it appears that a history of two (2) prior, recent syncopal episodes was provided to the emergency room personnel at two (2) separate hospitals. The claimant and his corroborating witnesses denied providing this patient history. I believe a preponderance of the evidence shows that either the claimant or a family member supplied the information because additional family

history, which would only be known by the claimant or a family member, was also provided. After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that the claimant has failed to prove that he sustained a compensable injury within the meaning of the Arkansas Workers' Compensation Laws.

In the event compensability is overcome, which is inconsistent with the findings and conclusions reached herein, the claimant has also requested temporary total disability benefits through the present, maintaining his healing period has not ended. The medical evidence reflects that the claimant was discharged on February 26, 2004, and advised to remain off work until at least March 9, 2004, or until medically cleared. Despite the claimant's assertion that he returned to the doctor after his discharge, there is no medical evidence whatsoever to support this claim. (Jt. Ex. A, pp.51, 55)

____Accordingly, the within claim is respectfully denied and dismissed.

IT IS SO ORDERED.

DAVID GREENBAUM
Chief Administrative Law Judge