

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F501693

GEORGE BOX

CLAIMANT

TYSON SALES AND DISTRIBUTION
SELF INSURED

RESPONDENT

OPINION FILED NOVEMBER 18, 2005

Hearing before ADMINISTRATIVE LAW JUDGE MICHAEL L. ELLIG in
Springdale, Washington County, Arkansas.

Claimant represented by AARON MARTIN, Attorney, Fayetteville,
Arkansas.

Respondents represented by MELISSA LEE, Attorney, Springdale,
Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above styled claim on September 19, 2005, in Springdale, Arkansas. The deposition of the claimant was taken on June 23, 2005, and has been admitted as Respondents' Exhibit No. 4. The deposition of Dr. John Venter was taken on August 12, 2005, and has been admitted as Claimant's Exhibit No. 4. The deposition of Dr. Gary Moffitt was taken on September 9, 2005, and has been admitted as Respondents' Exhibit No. 3.

A pre-hearing order was entered in this case on May 19, 2005. This pre-hearing order set out the stipulations offered by the parties and outlined the issues to be litigated and resolved at the present time. A copy of the pre-hearing order was made Commission's Exhibit No. 1 to the hearing.

The following stipulations were offered by the parties and are hereby accepted:

1. On January 24, 2005, the relationship of employee-self insured employer-third party administrator existed

between the parties.

2. The appropriate weekly compensation rates are \$466.00 for total disability and \$350.00 for permanent partial disability.
3. The claim is controverted in its entirety.

By agreement of the parties, the issues to be litigated and resolved at the present time were limited to the following:

1. whether the claimant's deep vein thrombosis and pulmonary embolism represent compensable injuries.
2. The claimant's entitlement to the payment of medical expenses, temporary total disability benefits from February 4, 2005 through a date yet to be determined, and attorney's fees.

In regard to these issues, the claimant contends:

"First, the claimant will contend that he sustained a compensable injury on January 24, 2005. Specifically the claimant will contend that he suffered from deep vein thrombosis (DVT) and a resulting pulmonary embolism. The claimant works for the respondent as a truck driver, and it was the continuous seated position and immobility that is the major cause of his injury. The claimant will contend that his injury arose from and occurred in the course and scope of his employment with the respondent. As such, the claimant will contend that he is entitled to reasonable and necessary medical treatment for his compensable injury, including but not limited to payment of any and all outstanding balances, satisfaction of any and all subrogation interest and a dollar for dollar reimbursement for any out of pocket expenses.

Also the claimant will contend that he is entitled to temporary total disability benefits from January 24, 2005, through a date yet to be determined. In support, the

claimant will contend that he has remained in his healing period since the date of accident and that he remains unable to perform any gainful activity at this time.

Finally, because this claim has been denied in its entirety, the claimant will contend that he is entitled to a controverted attorney's fee for the indemnity benefits sought and any and all future indemnity benefits for this injury.

The claimant reserves his right to any and all additional benefits associated with this claim."

In regard to these issues, the respondents contend:

"That they have not accepted the alleged injury of January 24, 2005 as compensable.

That it is unclear whether the claimant is alleging a specific incident or gradual onset injury. If the claimant is alleging a specific incident, there has been no physical trauma or accidental injury, identified by time and place of occurrence of any kind was reported to the respondents. If the claimant is alleging a gradual onset, that is not caused by a specific incident or not identifiable by time and place of occurrence, the respondents contend that the described injury of deep vein thrombosis and pulmonary embolism does not fall into the gradual onset category. If the claimant alleges that the deep vein thrombosis and pulmonary embolism is an occupational disease, the respondents contend that the claimant's condition is not an occupational disease as it did not arise out of or in the course of the employment and it does not naturally flow or unavoidably result from a work related injury. Additionally, the claimant's deep vein thrombosis and pulmonary embolism is not due to the nature of the claimant's employment as a truck driver, that the hazards of deep vein thrombosis and pulmonary embolism do not exist and are not characteristic of and peculiar to the occupation of the truck driving and the claimant did not actually incur the deep vein thrombosis and pulmonary embolism in his employment with the respondent.

That at the time of the onset of the deep vein thrombosis and pulmonary embolism, the claimant was at home and had been at home and in a non driving status for approximately two days.

That no temporary total disability benefits are due as the claimant has not been put off work for any work related condition or injury.

That the claimant is not entitled to medical benefits on this claim as it is not a work related condition.

That the claimant is not entitled to a controverted attorney's fee."

DISCUSSION

_____The central issue in this case is whether the claimant's deep vein thrombosis and subsequent pulmonary emboli are compensable under the Act. The burden rests upon the claimant to prove all of the necessary elements to establish this fact.

The medical evidence shows that the claimant's difficulties, beginning on or about February 4, 2005, were due to multiple pulmonary emboli that adversely affected his cardiopulmonary system. This evidence further shows that these multiple emboli likely had their origin in the deep veins of the claimant's lower extremities (i.e. deep vein thrombosis).

The claimant's maintains that his employment activities with this respondent required him to remain in a seated position for extended periods of time. He contends that this employment related prolonged sitting played a causal role in producing the deep vein thrombosis, which in turn produced the pulmonary emboli.

In support of this causal relationship, the claimant has offered the reports and records of Dr. John Venter, an internist and one of the claimant's treating physicians. Dr. Venter attributed the claimant's deep vein thrombosis and subsequent emboli to the extensive and prolonged sitting required by the claimant's duties as an over the road truck driver. Dr. Moffitt, a general practitioner also evaluated the claimant. He concurred that prolonged sitting postures can play a causal role in the development of deep vein thrombosis and ultimately pulmonary emboli, but opined that it was not the "major cause" of these conditions.

However, it is obvious from the reports and records of both Dr. Venter and Dr. Moffitt, that there was a multitude of causes or contributing factors that ultimately resulted in the claimant's development of the deep vein thrombosis and the subsequent pulmonary emboli. Two of these primary causes were that the claimant's blood was in hypercoagulable state (an increased tendency for his blood to coagulate or clot) and that he was suffering from longstanding venous stasis (circulatory defects in the deep venous system). The medical evidence does not attribute either of these conditions to the claimant's employment or any employment related accident or incident. Further, the medical evidence presented fails to show that prolonged sitting, employment related or otherwise, was the "major cause" of the claimant's development of the deep vein thrombosis and the subsequent pulmonary emboli. In fact, Dr. Moffitt expressly opined otherwise.

It also appears from the evidence presented that prior to the occurrence of the claimant's deep vein thrombosis and pulmonary emboli, the claimant's prolonged sitting was not limited to his employment environment. Although the claimant's testimony indicated that he was highly active when at home (at the hearing, he testified that while he was at home for the two days prior to the onset of his pulmonary emboli, he played with his grandchildren six to eight hours at a time and that this was his usual practice), his testimony is significantly different from the statements he made to his various treating physicians. Dr. Amy McGaha noted in her report of February 24, 2005, that the claimant had no interest in becoming more active and was not inclined to follow his doctor's orders to walk 45 minutes a day five days a week. In this report, she quotes the claimant as stating:

"I only want to walk from my bed to the dining room table to the couch and back."

The magnitude of the claimant's obesity at the time of the occurrence of the pulmonary emboli, would also be contradictory to his being highly active while at home.

It would appear that Dr. Venter has based his opinion that the claimant's employment sitting was the cause of his deep vein thrombosis and ultimate pulmonary emboli on the assumption that the claimant's respiratory complaints first appeared immediately after he had been driving the respondent's truck for an extended period. This assumption is contrary to the greater weight of the evidence. The claimant testified his respiratory complaints first began shortly after having dinner with his family and at least two days

after he had returned from his last trip for the respondents. His testimony also fails to show that, when he completed his last trip, he was experiencing any symptoms with his lower extremities that would indicate the presence of the precursor deep vein thrombosis. Thus, Dr. Venter's opinion is clearly based upon a mistake of a material fact.

While it is certainly possible that the claimant's employment related sitting could have played a causal role in precipitating his deep vein thrombosis, it is equally possible that a multitude of activities or events could have been the culprit. The claimant's sitting at home or sitting in the restaurant with his family would be no different from his employment related sitting and would be more closely related in time to the initial onset of these difficulties. A relatively minor blow or trauma to one of the claimant's lower extremities could also have produced the initial deep vein thrombosis. Finally this condition could have also simply occurred spontaneously, without any outside trauma or activity.

In order to establish the required causal relationship between the claimant's employment and his deep vein thrombosis and ultimate pulmonary emboli, more than a mere "possibility" is required. However, this is all the claimant has shown. The evidence presented fails to prove that the existence of this requisite causal relationship is likely or probable.

Due to the ultimate nature of the claimant's actual difficulties, compensability of these difficulties would be

controlled by the provisions of Ark. Code Ann. §11-9-114. In order to meet the requirements for a “compensable” injury or illness under this subsection, the claimant must prove:

“In relation to other factors contributing to the physical harm, an accident is the major cause of the physical harm.”

This subsection also requires that the work related activity precipitating the injury and resulting disability or death must be “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 be the major cause of the physical harm.”

After consideration of all the evidence presented, it is my opinion that the claimant has failed to prove that his deep vein thrombosis and subsequent pulmonary emboli would represent a “compensable” injury or illness under Ark. Code Ann. §11-9-114. Even if the claimant had proven that his employment related sitting played a causal role in causing or precipitating his deep vein thrombosis and subsequent pulmonary emboli, he has not proven that this was the “major cause” of this resulting physical harm. Further, the claimant’s employment related activities of sitting would not even represent an “accident” as that term is used in the Act. Finally, this employment related activity of sitting while operating his truck would not be “extraordinary and unusual” in comparison to his usual work in the usual course of his employment. Obviously, sitting for extended periods of time is a necessary activity to perform the position of an over the road truck driver

and would be usual or commonplace for this type of employment. Clearly, the claimant has engaged in this type of activity during his entire 16 year period of employment with this respondent. The only thing that is unusual or extraordinary about the claimant's employment activities prior to his development of the deep vein thrombosis and resulting pulmonary emboli, was that the number of hours he drove each day was actually less than that normally required for most over the road drivers (9 to the DOT maximum of 10 hours driving per day is not uncommon for this type of employment).

In summary, I find that the claimant has failed to prove by the greater weight of the credible evidence that his deep vein thrombosis and subsequent pulmonary emboli on or about February 4, 2004, constitutes a compensable injury within the meaning of the Act. Therefore, I have no alternative but to deny and dismiss this claim in its entirety.

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On all relevant dates, including January 24, 2005, the relationship of employee-self insured employer-third party administrator existed between the parties.
3. On all relevant dates, the claimant earned wages sufficient to entitle him to weekly compensation benefits of \$466.00 for total disability and \$350.00 for permanent partial disability, should such benefits have been appropriate.

4. The claimant has failed to prove by the greater weight of the credible evidence that the deep vein thrombosis and subsequent pulmonary emboli he sustained on or about February 4, 2005, constitutes a compensable injury or illness within the meaning of the Act. Specifically, he has failed to prove the requisite causal relationship between his employment and the development of these conditions. He has also failed to prove that these cardiopulmonary difficulties meet the definitional requirements for a compensable injury under Ark. Code Ann. §11-9-114. The evidence fails to show that any employment related activity or event was the “major cause” of this resulting physical harm. The claimant has also failed to prove the existence of any employment related causal or contributing factor that would be in the form of an “accident,” as that term is used in the Act. The greater weight of the credible evidence fails to show the existence of any employment related causal or contributing factor that would be extraordinary or unusual in comparison to the claimant’s usual work and his usual place of employment. Finally, the greater weight of the credible evidence fails to show the occurrence of any unusual or unpredicted employment related incident that would be related to the claimant’s employment, to be the “major cause” of the resulting

physical harm.

5. The respondents have denied that the claimant's pulmonary and circulatory difficulties represent a compensable injury or illness and have controverted this claim in its entirety.

ORDER

Based upon my foregoing findings and conclusions, I have no alternative but to deny and dismiss this claim in its entirety.

IT IS SO ORDERED.

MICHAEL L. ELLIG
Administrative Law Judge