

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F400145

JOHN C. BROWN (DEC'D), EMPLOYEE	CLAIMANT
ATLANTIC RESEARCH CORP., EMPLOYER	RESPONDENT
GALLAGHER BASSETT SERVICES, INC., TPA	RESPONDENT

OPINION FILED AUGUST 30, 2005

Hearing before Administrative Law Judge J. Mark White on July 21, 2005, in El Dorado, Union County, Arkansas.

Claimant represented by Mr. Tim A. Womack, Attorney at Law, Camden, Arkansas.

Respondents represented by Mr. Eric Newkirk, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On July 21, 2005, the above-captioned claim came on for a hearing in El Dorado, Arkansas. A pre-hearing conference was conducted on November 15, 2004, and a Prehearing Order was entered that same day. A copy of the November 15, 2004, Prehearing Order has been marked as Commission Exhibit No. 1 and made a part of the record herein without objection. At the hearing, the parties confirmed that the stipulations, issues, and respective contentions, as amended, were properly set forth in the Prehearing Order.

The parties stipulated that the Arkansas Workers' Compensation Commission has jurisdiction of this claim; that the employee-employer-carrier

relationship existed at all relevant times, including June 2, 2003; that on June 2, 2003, the claimant sustained a heart attack while working for the respondent-employer; and that the claimant earned an average weekly wage of \$394.

The parties agreed that the issues to be presented were whether the claimant sustained a compensable injury on June 2, 2003; and controversion and attorney's fees.

The claimant's estate contends that the claimant suffered a heart attack while in the scope and course of his employment which resulted in his death.

Respondents contend that the claimant did not sustain a compensable heart attack and cannot meet the requirements of Ark. Code Ann. § 11-9-114.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing 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 hereby made in accordance with Ark. Code Ann. § 11-9-704:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.

2. The stipulations agreed to by the parties are reasonable and are hereby accepted as fact.
3. The claimant's estate has proven by a preponderance of the evidence that in relation to other factors, an accident was the major cause of the claimant's death.
4. The claimant's estate has proven by a preponderance of the evidence that the exertion of the work necessary to precipitate the claimant's heart attack was extraordinary and unusual in comparison to his usual work in the course of his regular employment.
5. The claimant's estate has proven by a preponderance of the evidence that the claimant's heart attack was an unusual and unpredicted incident, and that the heart attack was the major cause of the claimant's death.
6. The claimant's estate has proven by a preponderance of the evidence that the claimant sustained an injury arising out of and in the course of his employment; that his injury caused internal physical harm to the body resulting in death; that the existence and extent of his injury is established by medical evidence supported by objective findings; and that his injury was caused by a specific incident identifiable by time and place of occurrence.
7. The claimant's estate has proven by a preponderance of the evidence that the

claimant sustained a compensable injury in the form of a heart attack resulting in sudden death.

8. The respondents have controverted this claim in its entirety.

DISCUSSION

I. History

The claimant worked as a technical operator for the respondent-employer, performing a variety of duties in the production process. He was obligated to also perform "other related duties as assigned," and one of those "other related duties" was mowing the grass in a 30-foot perimeter around the buildings where he worked. The claimant shared this duty with other workers; his supervisor, James Wilson, estimated that the claimant volunteered to mow "not every time, but most of the time." Wilson testified that the workers mowed the grass "a day or two every other week," varying from week to week depending on the weather. For 2003, the mowing began in May, according to Wilson, and the claimant had apparently mowed a few days before the injury in question. Wilson estimated that 75% of the buildings at the respondent-employer's facility are air conditioned, and it appears that the claimant's work was not confined to one building.

On June 2, 2003, the claimant was mowing with a co-worker, Charles Jenkins.

Jenkins estimated the two began mowing after their 8:30 a.m. break, but Wilson estimated they began shortly after 7 a.m. The claimant and Jenkins stopped for lunch at 11:30 a.m., and resumed mowing around noon. Shortly after 1 p.m., the claimant collapsed. The plant nurse immediately came to the scene with an automated external defibrillator (AED) which she attached to the claimant. The AED unit administered one shock, and the nurse continued CPR until an ambulance arrived. The claimant was pronounced dead on arrival at the hospital. The treating physician listed the cause of death as complications from diabetes, but both the plant nurse and Dr. W.A. Daniel, an expert witness called by the claimant's estate, agreed that the claimant experienced a heart attack causing sudden death. The parties have stipulated that the claimant sustained a heart attack.

The claimant's daughter, who is also an employee of the respondent-employer, testified that June 2, 2003, was a "muggy" day. She testified that when she went to get her father's truck after his death, she found his lab coat inside the truck "wringing wet" with what she presumed was sweat. The claimant's widow likewise testified that the claimant's clothes were wet with sweat, and his supervisor testified the claimant's hat was "soaking wet." The claimant introduced weather records documenting the temperature and humidity at various points throughout the morning of June 2, 2003. Utilizing a heat index calculator provided at the

Internet website of the National Weather Service (found at <http://www.srh.noaa.gov/lzk/html/metcalc.htm>), I have calculated the heat index that day as follows, and I take judicial notice of these statistics:

9:53 a.m.: Temp. 80.1°, Humidity 76%, **Heat Index 84°**
10:53 a.m.: Temp. 80.1°, Humidity 76%, **Heat Index 84°**
11:53 a.m.: Temp. 82.9°, Humidity 72%, **Heat Index 89°**
12:53 p.m.: Temp. 84.9°, Humidity 65%, **Heat Index 91°**

There is no evidence the claimant complained of any heart problems or exhibited any symptoms of heart problems prior to this incident. At the time of his heart attack, the claimant was being treated with medication for diabetes, high cholesterol, and high blood pressure. According to the testimony of his widow, all of these conditions were successfully controlled with medication. The claimant was admittedly a large man, weighing more than 300 lbs.

II. Adjudication

To prove a heart attack or other cardiovascular accident compensable, a claimant must show that (1) in relation to other factors, an accident is the major cause of any physical harm; and (2) that the exertion of the work necessary to precipitate the injury was extraordinary and unusual in comparison to the employee's usual work in the course of his regular employment, or that some unusual and unpredicted incident occurred which was the major cause of the

physical harm. ARK. CODE ANN. § 11-9-114. I find that the claimant has proven by a preponderance of the evidence each of these criteria.

The parties have stipulated that the claimant sustained a heart attack, placing this claim within the boundaries of § 11-9-114. Considering the first factor outlined above, it is recognized that the claimant had a number of pre-existing conditions that predisposed him to heart problems – his size, age, diabetes, high blood pressure, and high cholesterol. But there is no evidence in the record that the claimant had sought treatment specifically for his heart, or that he had exhibited any signs or symptoms of heart problems prior to this incident. There is no evidence as to the specific amount of arterial blockage, if any, in the claimant’s heart prior to this incident. There is no evidence that the claimant’s diabetes, high blood pressure, or high cholesterol were uncontrolled or problematic at the time of his heart attack.

The claimant’s daughter, widow, and supervisor all testified that various pieces of the claimant’s clothing were soaked, most likely with sweat. *Cf. Huffly Service First v. Ledbetter*, 76 Ark. App. 533, 69 S.W.3d 449 (2002) (claimant’s clothes “frosted with salt from his sweat”). As noted above, the heat index that day had reached 91° by 12:53 p.m., shortly before the claimant suffered his heart attack. By the testimony of his co-worker, the claimant would have been operating a mower in this heat for an hour by the time he collapsed. Dr. W. A. Daniels, who testified at

the hearing as an expert for the claimant's estate, opined in a letter of May 6 that the major cause of the claimant's death "was the extraordinary working conditions rather than underlying medical condition."

On a number of occasions the Commission and the Courts have found the major cause element satisfied where a claimant was laboring under extreme weather conditions at the time of his injury. *See, Huff Service First v. Ledbetter, supra; Williford v. City of North Little Rock*, 62 Ark. App. 198, 969 S.W.2d 687 (1998); *McCorkle v. Maverick Tube LP*, A.W.C.C. F307554 (Feb. 16, 2005). Similarly, the Commission and the Courts appear to be reluctant to deny compensation on the grounds of major cause where a claimant exhibited no prior signs or symptoms of heart trouble, particularly where, as in this case, the heart attack occurred immediately following the work activity in question. *See, e.g., Cloverleaf Express v. Fouts*, __ Ark. App. __, __ S.W.3d __ (April 27, 2005); *Dollarway School District v. Lovelace*, __ Ark. App. __, __ S.W.3d __ (Feb. 23, 2005); *Kimbrell v. USA Truck, Inc.*, A.W.C.C. F300739 (July 7, 2005). Given the evidence outlined above, particularly the lack of any evidence of prior heart trouble or arterial blockages, the strenuous nature of the work, and the relatively hot weather in which the claimant was working, I find that the claimant's estate has proven by a preponderance of the evidence that in relation to other factors, an accident was the major cause of the claimant's death. I note that I would

reach the same finding even in the absence of Dr. Daniels' testimony and opinion.

As to the second criteria of § 11-9-114, the relevant test is not merely whether the precipitating exertion was "extraordinary and unusual," but rather whether it was "extraordinary and unusual *in comparison to the employee's usual work in the course of his regular employment*" (emphasis added). The claimant's supervisor testified that workers mowed the grass "a day or two every other week," varying from week to week depending on the weather. Though the claimant had undoubtedly mowed the grass before, it is plain from the record that mowing was a job task he performed infrequently and irregularly. Most of his work was performed indoors, and his supervisor estimated that 75% of the buildings at the respondent-employer's facility are air-conditioned.

The mere fact that a task is an expected and required job duty does not mean that the task cannot be found to be extraordinary and unusual within the terms of § 11-9-114. *Cf. Huffly Service First v. Ledbetter, supra*. I find that the claimant's estate has proven by a preponderance of the evidence that the exertion of the work necessary to precipitate the claimant's heart attack was extraordinary and unusual in comparison to his usual work in the course of his regular employment. I further find that the claimant's estate has proven by a preponderance of the evidence that the claimant's heart attack was an unusual and unpredicted incident, and that the

heart attack was the major cause of the claimant's death.

The claimant's estate has proven the elements of compensability established by § 11-9-114. Given the evidence of record, I find that the claimant's estate has proven by a preponderance of the evidence that the claimant sustained an injury arising out of and in the course of his employment; that his injury caused internal physical harm to the body resulting in death; that the existence and extent of his injury is established by medical evidence supported by objective findings; and that his injury was caused by a specific incident identifiable by time and place of occurrence. The claimant's estate has proven every element of compensability; I therefore conclude that the claimant's estate has proven by a preponderance of the evidence that the claimant sustained a compensable injury in the form of a heart attack resulting in sudden death.

AWARD

The claimant's estate has proven by a preponderance of the evidence that the claimant sustained a compensable injury in the form of a heart attack resulting in sudden death. The respondents are hereby directed and ordered to pay benefits in accordance with the findings of fact and conclusions of law set forth herein.

The claimant's attorney, Mr. Tim A. Womack, is hereby awarded the

maximum statutory attorney's fee on all indemnity benefits controverted, pursuant to Ark. Code Ann. § 11-9-715.

All accrued sums shall be paid in a lump sum without discount, and this award shall earn interest at the legal rate until paid pursuant to Ark. Code Ann. § 11-9-809.

IT IS SO ORDERED.

HON. J. MARK WHITE
Administrative Law Judge