

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM F108757

**KERRY E. COFFMAN,
EMPLOYEE**

CLAIMANT

**WATT ELECTRIC CO., INC.,
EMPLOYER**

RESPONDENT

**EMPLOYERS MUTUAL
CASUALTY CO.,
INSURANCE CARRIER**

RESPONDENT

OPINION FILED JANUARY 25, 2005

Pursuant to a Hearing conducted January 13, 2005, before Administrative Law Judge Richard B. Calaway in Hot Springs, Garland County, Arkansas, with

Mr. Byron Cole Rhodes, Attorney at Law, Hot Springs, Arkansas, appearing for the claimant; and

Ms. Carol Lockard Worley, Attorney at Law, Little Rock, Arkansas, appearing for the respondents.

STATEMENT OF THE CASE

This is a dispute over compensability of hemorrhoids suffered by the claimant.

The claimant contended that he suffered compensable hemorrhoids July 6, 2001, and should be awarded benefits, including reasonably necessary medical and related expenses and temporary total disability benefits for a period of seven weeks from the date of the injury. An attorney's fee for controversion was also requested while other possible issues were reserved for a later occasion.

The respondents contended that the claimant did not sustain compensable hemorrhoids. Specifically, they contended that he suffered from pre-existing hemorrhoids and did not sustain a compensable injury, either as an aggravation of his pre-existing pathology or as a new injury occurring by specific incident or by gradual onset. As to a possible injury by gradual onset, they further contended that the alleged injury was neither caused by rapid repetitive motion at work nor

the major cause of any disability or need for treatment he experienced. They further contended, in the alternative, that the claimant's healing period ended July 20, 2001, so that he is not entitled to temporary total disability benefits thereafter and, further, that they are not liable for benefits otherwise accruing prior to the receipt of notice, the Form C, on August 2, 2001, pursuant to Ark. Code Ann. §11-9-701.

The record, which included the deposition of Dr. Allen D. Gerber, the testimony of the claimant, and documentary evidence, was closed at the conclusion of the hearing.

Based upon the record as a whole, and without giving the benefit of the doubt to any party, as required by the Act, the following findings of fact and conclusions of law are hereby made:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of the parties and subject matter of this claim.
2. Pursuant to the stipulations of the parties and the record, the employment relationship existed at all pertinent times including July 6, 2001; the claimant's average weekly wage on that date was \$480.00; and his condition required surgery, performed July 13, 2001, by Dr. Allen Gerber.
3. The preponderance of the evidence fails to show that the claimant suffered a compensable injury on or about July 6, 2001, within the meaning of the Act.

DISCUSSION

The claimant testified that on July 6, 2001, he and a co-worker were installing heavy metal outdoor lights, working from a cherry picker. He stated that the space in the cherry picker was not convenient for lifting and that he had to "dead lift" up and over to complete the installation of the lights. He further testified that the job lasted for about a day and a half and that midway through the

second day he noticed bleeding down his legs and he got to hurting real bad. He testified that he told the co-worker and his supervisor and the supervisor told him to go home if he need to.

The claimant testified that he went home and tried Preparation H but that did not help. He stated that he kept bleeding and eventually went to the emergency room. Medical records furnished by the respondents show that the claimant was seen in the emergency room July 8, 2001, by Dr. Judy Borland. Her report indicates that the claimant had one fairly large hemorrhoid and one smaller one on the right side that appeared to be thrombosed, very painful, firm, and darker in color, both of which she incised, evacuating a small amount of clot. The claimant was given medication and advised to do warm soaks, follow up with his physician, and consider having the hemorrhoids “taken care of”.

The claimant testified that the employer did not file any kind of workers’ compensation claim and told him that workers’ compensation would not cover a hemorrhoid problem because “everybody has got hemorrhoids,” and that he could file it himself, which he did. The emergency room record indicates that the claimant returned July 12, 2001, stating that his condition was worse, that he was unable to have a bowel movement, and that he had been using Preparation H and sitz baths with no benefit. On that occasion, he was first seen by Dr. David Tapley who wrote that he observed rosettes of hemorrhoids which he was unable to reduce secondary to pain. Dr. Tapley also discussed the claimant with Dr. Gerber who examined the claimant after he had completed surgery. Dr. Gerber’s note for July 12, 2001, indicates that he found large prolapsing internal and external hemorrhoids for which he recommended hemorrhoidectomy. The claimant was permitted to go home but returned the next day and Dr. Gerber performed an internal and external

hemorrhoidectomy. As noted above, the claimant contends that his hemorrhoids were the result of a compensable injury and that benefits and an attorney's fee should be awarded.

It is well established that the claimant has the burden of proving entitlement to benefits, generally by a preponderance of the evidence and without the benefit of any presumption of compensability or entitlement to benefits.

Under prior law, it was the duty of the Commission to draw every legitimate inference possible in favor of the claimant, and to give the claimant the benefit of the doubt in making factual determinations. However, current law requires that evidence as to meeting the burden of proof be weighed impartially and without giving the benefit of the doubt to any party, including the claimant. Act 10 of 1986, §10(2nd Ex. Sess.), Ark. Code Ann. §11-9-704(c)(4), effective July 1, 1986; Fowler v. McHenry, 22 Ark. App. 196 (1987). Even under prior law, when the claimant was entitled to the benefit of the doubt, conjecture and speculation, however plausible, were not permitted to supply the place of proof. Dena Construction Co. v. Herndon, 264 Ark. 791 (1979).

An injury or condition is not necessarily compensable because it has some relationship to the employment. It must meet the statutory definition of a compensable injury as set forth in Ark. Code Ann. §11-9-102(4)(A). Under that provision, in light of the claimant's testimony, his condition could only be compensable as a gradual onset injury, caused by rapid repetitive motion, as described in Ark. Code Ann. §11-9-102(4)(A)(ii). Elsewhere, the statute requires proof by a preponderance of the evidence and states that such a condition is compensable only if the alleged compensable injury is the major cause of the disability or need for treatment. Ark. Code Ann. §11-9-102(4)(E).

The claimant's testimony showed that his condition was associated with his work in general during the second day of installing the outdoor lights. He did not indicate that there was a specific

incident of accidental injury associated with the bleeding of his hemorrhoids. In fact, instead of experiencing an incident of injury, at first he was not sure if he felt moisture from sweating as opposed to bleeding. The testimony also fails to show that his activity at the time could be considered rapid repetitive motion, as required by the Act. The medical record also shows that the claimant had a history of hemorrhoids going back at least to 1996 and that surgery had been considered at that time. (Dep. at 6) Moreover, there is insufficient medical evidence to support a conclusion that the alleged compensable injury, as opposed to his pre-existing condition, was the major cause of the disability or need for treatment he experienced in July, 2001.

Thus, the evidence shows that the claimant's condition was not associated with a specific accidental injury but developed by gradual onset, but fails to show that it was caused by rapid repetitive motion or that it was the major cause of the disability or need for treatment that he experienced. For these reasons, his condition does not meet the statutory definition of a compensable injury and is not compensable even though it may be associated with his activity at work.

For the foregoing reasons, this request for benefits should be, and it is hereby, respectfully, denied and dismissed.

IT IS SO ORDERED.

RICHARD B. CALAWAY
Administrative Law Judge