

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F502547

JEFFERY H. HUNTER, EMPLOYEE	CLAIMANT
INTERNATIONAL PAPER COMPANY, EMPLOYER	RESPONDENT
SEDGWICK CLAIMS MANAGEMENT SERVICES, CARRIER	RESPONDENT

OPINION FILED NOVEMBER 17, 2005

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN, on August 19, 2005 at Pine Bluff, Jefferson County, Arkansas.

Claimant represented by the HONORABLE STEVEN R. MCNEELY, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE MICHAEL J. DENNIS, Attorney at Law, Pine Bluff, Arkansas.

ISSUES

A hearing was conducted to determine the claimant's entitlement to payment of medical expenses; temporary total disability benefits and attorney's fees. All other issues are reserved.

At issue is whether or not the claimant sustained a compensable injury pursuant to Ark. Code Ann. §11-9-102.

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 preponderates in favor of the claimant.

STATEMENT OF THE CASE

The parties stipulated to an employer-employee-carrier relationship on March 3, 2005 at which time the claimant was earning sufficient wages to entitle him to a compensation rate of \$451.00/\$338.00, in the event this claim is found to be compensable.

The claimant contends he sustained injuries to his mouth, teeth and right knee on March 3, 2005 in an unexplained fall from a forklift. He seeks payment of medical expenses, temporary total disability benefits from March 3, 2005 to April 11, 2005 and attorney's fees.

The respondents contend the fall was idiopathic (caused by a seizure) and therefore not compensable.

The following were submitted without objection and comprise the evidence of record: the parties' prehearing questionnaires and exhibits contained in the hearing transcript.

The following witnesses testified at the hearing: the claimant and co-workers Dusty Chidester, Gary Austin, John Northrup and Supervisor, John Romine. The co-workers generally agreed that the claimant assumed control of the forklift from Mr. Chidester and five to fifteen minutes later, the claimant was found on the floor laying on his left side six to eight feet away from the forklift. He was bleeding from his mouth and "shaking" or "jerking." Witnesses differed as to whether he was unresponsive or mumbling incoherently. It was evident that the claimant had driven the forklift (based on the tracks and the position of the forklift) and his hard hat was in the seat of the forklift.

The claimant, age 24 (D.O.B. December 4, 1980) worked as a forklift driver for the respondent-employer for one year prior to the accident. His health history includes two to three year treatment for anxiety and depression. At the time of his injury he had been taking Xanax and Wellbutrin for two to three months.

On Thursday, March 3, 2005, the claimant stated he was performing fast-paced work when he began to feel weak and exhausted. At the request of his supervisor, he worked through his break but felt better after he was able to take a delayed break. He has never lost consciousness before or after this incident at work.

The claimant doesn't actually remember anything about the accident. He speculated he could have slipped on a worn tread on the forklift or the step could have been slippery with oil because the

forklift had just been in the maintenance shop for repairs.

The claimant sustained injuries to his knee, a scar on his top lip and chin (hidden by a mustache and goatee) and broken or loose teeth. The knee injury healed, the lip was sutured but the dental injury will require implants, (see Dr. Frisby's report of May 25, 2005).

The claimant returned to work on April 11, 2005 but voluntarily left their employ.

MEDICAL EVIDENCE

The claimant was taken by ambulance to the ER and diagnosed with "fractured maxillary teeth, complex laceration of (the) upper lip, (and a) laceration of (the) chin," after a fall head first onto concrete. Testing of the neck, chest, head and right knee was interpreted as normal.

A medical report dated March 17, 2005 shows Dr. Tilley requested a CT scan of the head because of "syncope and collapse." A nursing note dated March 22, 2005 indicates the claimant needed an MRI to evaluate "severe headaches."

The claimant's family physician had been treating the claimant for depression and anxiety with Lesipro, Xanax and Alprazalam, prior to the accident at work.

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. The claimant has the burden of proving the following requirements, as defined by Ark. Code Ann. §11-9-102, by a preponderance of the evidence of record, which means "evidence of greater convincing force," Smith v. Magnet Cove Barium Corporation, 212 Ark. 491, 206 S.W.2d 442 (1947):

- 1) proof that the injury arose out of and in the course of employment
- 2) proof that the injury caused internal or external physical harm to the body which required medical services or resulted in disability
- 3) proof establishing the injury by objective medical evidence
- 4)(a) proof that the injury was caused by a specific incident identifiable by time and place of occurrence

or

- (b) proof that the injury was caused by rapid, repetitive motion and proof that the injury was the major cause of disability or need for medical treatment.

Compensation must be denied if the claimant fails to prove any one of these requirements. Mikel v. Engineering Specialty Plastics, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

A claimant seeking benefits must prove by a preponderance of the evidence that the injury arose out of and in the course of the employment. Deffenbaugh Indus. v. Angus, 313 Ark. 100, 852 S.W.2d 804 (1993). “Arising out of the employment” refers to the origin or cause of the accident, while “in the course of the employment” refers to the time, place and circumstances under which the injury occurred. Little Rock Convention & Visitors Bureau v. Pack, 60 Ark. App. 82, 959 S.W.2d 415 (1997).

An idiopathic fall is one whose cause is personal in nature, or peculiar to the individual. ERC Contractor Yard & Sales v. Robertson, 335 Ark. 63, 977 S.W.2d 212 (1998). Because an idiopathic fall is not related to employment, it is generally not compensable unless conditions related to employment contribute to the risk by placing the employee in a position that increases the dangerous effect of the fall. *Id.*

In the case of an accident where the cause of the harm is unknown, the injury is the result of an unexplained fall, which is generally regarded as compensable, Moore v. Darling Store Fixtures, 22 Ark. App. 21, 732 S.W.2d 496 (1987).

The evidence of record shows the claimant was injured when he fell at work. The claimant has no memory of this event. There is no medical explanation for his loss of consciousness. He has no history of blackouts or seizures. He was using prescription medication at the time for depression, but there is no evidence that these medications caused side-effects or otherwise interfered with his ability to work.

Accordingly, I find the claimant has met his burden of proving a compensable injury due to an unexplained fall.

1. The Workers' Compensation Commission has jurisdiction of this claim in which the relationship of employer-employee-carrier existed on March 3, 2005 at which time the claimant was earning sufficient wages to entitle him to a compensation rate of \$451.00/\$338.00.
2. The claimant has proven by a preponderance of the credible evidence that he sustained a compensable injury, caused by a specific incident, arising out of and in the course of his employment which produced physical bodily harm, supported by objective findings, requiring medical treatment or producing disability, pursuant to Ark. Code Ann. §11-9-102.
3. The respondents are directed to pay all reasonable and necessary medical expenses within thirty days of receipt pursuant to Rule 30.
4. The respondents are directed to pay temporary total disability benefits from March 3, 2005 to April 11, 2005 as the claimant remained in his healing period, unable to work.
5. This claim has been controverted and the claimant's counsel is entitled to the maximum attorney's fees to be paid in accordance with A.C.A. §11-9-715, §11-9-801, and WCC Rule 10.

Pursuant to the Full Commission decisions of Coleman v. Holiday Inn, (November 21,1990) (D708577), and Chamness v. Superior Industries, (March 5, 1992)(E019760), the claimant's portion of the controverted attorney's fee is to be withheld from, and paid out of, indemnity benefits, and remitted by the respondent, directly to the claimant's attorney.

As a reminder, Ark. Code Ann. §11-9-715 was amended by Act 1281 of 2001, limiting attorney's fees on medical benefits and services for injuries after July 1, 2001.

AWARD

Respondents are directed to pay benefits in accordance with the Findings of Fact above along with their proportionate share of attorney's fees. 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 A.C.A. §11-9-809, and Couch v. First State Bank of Newport, 49 Ark. App. 102, 898 S.W.2d 57 (Ark. Ct.

App. 1995), and Burlington Industries, et al v. Pickett, 64 Ark. App 67, 983 S.W.2d 126 (1998), 336 S.W. 515, 988 S.W.2d 3 (1999).

IT IS SO ORDERED.

ELIZABETH W. HOGAN
Administrative Law Judge