

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F110901, F205318 & F301321**

<b>CLIFFORD E. LOISELL, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>AURA ENERGY SERVICES, EMPLOYER</b>	<b>RESPONDENT</b>
<b>ST. PAUL FIRE &amp; MARINE INSURANCE, CARRIER</b>	<b>RESPONDENT</b>

**OPINION FILED AUGUST 18, 2005**

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN, on May 20, 2005 at Pine Bluff, Jefferson County, Arkansas.

Claimant represented by the HONORABLE GARY DAVIS, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE JOSEPH E. KILPATRICK, JR., Attorney at Law, Little Rock, Arkansas.

**ISSUES**

A hearing was conducted to determine the claimant's entitlement to payment of medical expenses and attorney's fees.

At issue is whether or not the claimant sustained three compensable injuries as defined by Ark. Code Ann. §11-9-102 and §11-9-114. All other issues are reserved.

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 with regard to the claim for heat exhaustion.

**STATEMENT OF THE CASE**

The parties stipulated to an employer-employee-carrier relationship during 2001 and 2002.

The claimant contends he injured himself at work on three occasions. On April 1, 2001 (Claim #F205318) he was pulling a fire hose and experienced a rupture in the colon/rectum/abdominal area. On August 22, 2001 (Claim #F110901) he developed heat exhaustion. On July 12, 2001 (Claim #F301321) he was helping to move a pipe when he developed a hernia. The claimant seeks payment of medical expenses and attorney's fees.

The respondents contend the claimant did not sustain any compensable injuries arising out of and in the scope of his employment.

The following were submitted without objection and comprise the evidence of record: the parties' prehearing questionnaires and exhibits contained in the transcript along with the claimant's deposition (taken December 8, 2004) incorporated by reference.

The following witnesses testified at the hearing: the claimant; Lisa Cody, a three year foreman for Aura; Kenneth Wallace, a four year Entergy supervisor and EMT; Misty Stone, an eight year Aura employee and Arliss Stone, an Aura employee for eighteen years. The claimant's supervisors, Mr. Cherry and Mr. Shepard did not testify. The claimant was a poor historian and he seemed confused about the chronology of events. It should also be noted that the medical records show inconsistent information regarding the hernia repair, substance abuse and the dates and exact mechanism of injury.

The claimant, age 52 (D.O.B. August 20, 1952) has a fourth grade education and work experience as a manual laborer and truck driver. He has a history of tobacco, drug and alcohol abuse. His health history includes an untreated hernia 20-25 years ago, a motor vehicle accident (MVA) in 1990 with neck surgery performed by Dr. Adametz, a 1979 back injury in the oil fields resulting in three surgeries and a childhood MVA with injuries to his ears and left leg.

The claimant began work for the respondent-employer as a foreman in November, 2000. The Aura staff works inside the Entergy plant. The claimant described his job duties as lifting heavy steel grates over drains and pulling around a pressurized water hose to clean the grates and the floor of the plant. (Tr. p. 36-39)

### **FIRST INJURY**

On April 1, 2001, the claimant was washing down the plant when a flange on the pressurized water hose caught on a grate in the floor and jerked him back. The hose was between his legs and he was pulling the hose in an upward motion. He felt pain in his testicles and reported the incident to his supervisor. He developed swelling and rectal bleeding and sought medical treatment. He was off work six weeks. When he returned, he was given a job cutting grass which he performed for three months.

Medical records dated April 12, 2001 show a history of rectal bleeding and left quadrant pain for one week. A colonoscopy revealed internal hemorrhoids. The doctor recommended increased water intake and a high fiber diet. The condition had resolved as of May 11, 2001. The claimant also reported to the doctor that he used alcohol and marijuana. Neither Dr. Ahmed nor Dr. Morris record a work-related injury. Dr. Morris' report of April 13, 2001 indicates the claimant gave a history of bloody stool since the 4<sup>th</sup>. Dr. Morris notes that the claimant performs heavy lifting but has had chronic pain for twenty years and there is no dramatic change.

Although the claimant said he was unable to work for a month based on the recommendation of Dr. Ahmed's secretary, he also indicated that the respondent-employer provided him with light duty mowing grass so he wouldn't have to strain pulling the water hose.

## **SECOND INJURY**

On August 22, 2001, the claimant had been cutting grass when he was asked to fill in on his old job. He was dehydrated, pulling heavy grates and working in boiling hot water when he began to feel ill.

The claimant was treated for heat stress by Misty Stone of the Safety Division and EMT, Kenneth Wallace. When the claimant stated he was experiencing chest pain and numbness in his arm, the supervisor drove him to the clinic in Redfield. This incident was corroborated by Kenneth Wallace, Misty and Arliss Stone. Misty Stone also testified the claimant told her he had chest pain over the weekend. The claimant was treated for chest pain at the emergency room (ER) and was off work six weeks.

Medical records show the claimant was evaluated for nausea, vomiting, and numbness in his arms which developed while he was working. The August 23, 2001 ER reports mention the claimant had been working in the sun all day. He was diagnosed with heat exhaustion. A notation on the report shows "this will be a workman's comp claim." Based on an abnormal EKG, an angiogram was performed on August 24, 2001. He was diagnosed with unstable angina, consistent with lateral wall ischemia and the claimant's family history of heart disease. The doctor commented that the left

ventricular systolic dysfunction was unexplained and the claimant needed strict risk factor modification especially if he used drugs or alcohol. The claimant now takes medication for his heart and hypertension.

### **THIRD INJURY**

On July 12, 2002, the claimant was lifting heavy pipes with co-workers when he developed bleeding from hemorrhoids. He reported the incident to his supervisor.

Arliss Stone testified that some time after the heat stroke incident, he saw the claimant walking awkwardly. The claimant attributed it to an old injury when he worked on an oil well. Surgery had been recommended but the claimant refused.

Lisa Cody testified the claimant mentioned he was experiencing groin problems after he “pulled himself” while washing down the plant.

A report dated August 1, 2002 indicates the claimant had suffered from a hernia for the past 25 years but he was now complaining of intense pain and swelling with a bulge that began 3 to 4 days ago. Another report dated August 1, 2002 mentions increased pain 3 days after heavy lifting. Two separate notes dated August 2, 2002 indicate the claimant was involved in an accident at work, a “double rupture” three to four days ago when he got tangled up with the hose and fell. A later report dated August 21, 2002 shows his condition worsened after heavy lifting in July 2002. The claimant was diagnosed with a large scrotal cystic mass. Surgery was performed September 10 2002 and the claimant was off work 2 months. Dr. Muldoon opined that the scrotal swelling was unrelated to a hernia.

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The claimant quit work over a disagreement with his supervisor about a delay in the crew’s payroll and about the way his wages were being garnished to pay for medical expenses. The claimant found a job driving trucks for another employer.

The claimant stated that accident reports were completed on all of the injuries but never relayed to the carrier. The paperwork was discovered when a new supervisor took over and the company was audited by OSHA. These reports were not introduced into evidence.

### **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. Under the Act, the claimant has the burden of proving the following requirements by a preponderance of the evidence of record:

1. An injury arising out of and in the course of employment
2. An injury causing internal or external harm to the body, requiring medical services or resulting in disability or death
3. An injury established by objective medical findings

4. (a) An injury caused by a specific event identifiable by time and place of occurrence  
or
5. (b) A gradual injury, caused by rapid and repetitive motion, which is the major cause of the disability or need for medical treatment.

The respondents have controverted these claims as not arising within the course and scope of employment.

“Arising out of the employment” refers to the origin or cause of the accident and the phrase “in the course of employment” refers to the time, place and circumstances under which the injury occurred. Gerber Products v. McDonald, 15 Ark. App. 226, 692 S.W.2d 879 (1985).

The test for arising out of the employment requires that a causal connection exist between the injury and the employment. The injury must be a natural or probable consequence or incident of the employment and a natural result of one of its risks. J & G Cabinets v. Hennington, 269 Ark. 789, 600 S.W.2d 916 (Ark. App. 1980).

### **FIRST INJURY**

The evidence of record shows that the claimant performs a strenuous job. However, there is no mention in the medical records of a work-related injury in April, 2001 and in fact, the claimant relates the onset of symptoms to the 4<sup>th</sup> instead of the 1<sup>st</sup> of April. Therefore, I find the claimant has not proven a specific injury identifiable by time and place of occurrence arising out of and in the course of employment by a preponderance of the evidence.

### **SECOND INJURY**

Cardiovascular events are governed by Ark. Code Ann. §11-9-114.

The evidence of record shows the claimant was working in a hot environment, became dehydrated and nauseated, and felt chest pain. The claimant was taken to the hospital by his employer. Testing was necessary to evaluate the claimant’s symptoms. Ultimately, it was decided that the claimant did not need a stent and there was some indication that substance abuse may have played a role in his irregular heart rhythm.

As heat exhaustion manifests itself by adversely affecting blood pressure, it is a cardiovascular event. Although I find no evidence of unusual or extraordinary work activities, the combination of heat and dehydration is an unpredicted incident which was the major cause of physical harm. This event clearly was the cause of his illness which took place during working hours, demonstrating a causal connection between the incident and the employment. Therefore, the lay testimony proves the claimant's illness arose out of and in the course of his employment. Even if the claimant suffered from preexisting alcoholism, heart disease or angina, the incident at work was a sufficient aggravation to warrant medical intervention. Accordingly, I find the respondents are liable for the ER visit to evaluate the claimant's symptoms.

Assuming arguendo, the heat exhaustion is not compensable, I find the respondents remain liable for medical expenses pursuant to Laurie Brittain v. Southern Hospitality, 54 Ark. App. 318, 925 S.W.2d 810 (1996), as they directed his medical care.

### **THIRD INJURY**

The last injury was not a hernia but a scrotal cyst with a history of chronic swelling over twenty years. The medical records give conflicting dates regarding the onset of symptoms, with some reports indicating a fall while other reports show heavy lifting as the precipitating factor.

The formation of a cyst suggests a long-term process and without further explanation from the doctor, it is unclear to me how a fall or heavy lifting would cause the development of a cyst. As I interpret the medical evidence, the cyst predated the incident at work and was periodically symptomatic. Therefore, I find the cyst did not arise out of and in the course of his employment nor was it caused by a specific incident.

1. The Workers' Compensation Commission has jurisdiction of this claim in which the relationship of employer-employee-carrier existed among the parties during 2001 and 2002.
2. The claimant has failed to prove by a preponderance of the credible evidence of record that he developed hemorrhoids and a scrotal cyst 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 claimant has proven by a preponderance of the credible evidence of record that he suffered a compensable injury, heat exhaustion, as a result of an unpredicted incident which was the major cause of physical harm, pursuant to Ark. Code Ann. §11-9-114.
4. The respondents are directed to pay the claimant's ER visit.
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.
6. The respondents are directed to pay the court reporter's fees and expenses associated with transcribing this hearing within thirty days pursuant to

Commission Rule 20.

**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.

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ELIZABETH W. HOGAN  
Administrative Law Judge