

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F407021

SAMMY L. LUCY, EMPLOYEE	CLAIMANT
AMERICAN RAILCAR INDUSTRIES, EMPLOYER	RESPONDENT
SPECIALTY RISK SERVICES, INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED JANUARY 5, 2005

Hearing before Chief Administrative Law Judge David Greenbaum on December 3, 2004, at Jonesboro, Craighead County, Arkansas.

Claimant represented by Mr. John C. Barttelt, Attorney-at-Law, Jonesboro, Arkansas.

Respondents represented by Mr. Randy P. Murphy, Attorney-at-Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted December 3, 2004, to determine whether the claimant sustained a compensable injury within the meaning of the Arkansas Workers' Compensation Laws.

A prehearing conference was conducted in this claim on October 20, 2004, and a Prehearing Order was filed on said date. At the hearing, the parties announced that the stipulations, issues, as well as their respective contentions were properly set out in the Prehearing Order subject to an additional stipulation concerning the applicable compensation rates. A copy of the Prehearing Order was marked "Commission's Exhibit 1" and made a part of the record without objection.

It was stipulated that the employee/employer/carrier relationship existed at

all relevant times, including June 17, 2004; and that the respondents had controverted the claim in its entirety. Further, at the hearing, the parties agreed that the claimant's average weekly wage at the time of the alleged injury was \$389.00, entitling him to a compensation rate for temporary total disability of \$259.00 per week in the event the claim was found compensable.

By agreement of the parties, the primary issue for determination concerned compensability. If overcome, claimant's entitlement to associated benefits must be determined.

Claimant contended, in summary, that he sustained a compensable heat stroke, which arose out of and during the course of his employment on June 17, 2004; that he was entitled to temporary total disability beginning June 18, 2004, and continuing through September 1, 2004; that respondents should be held responsible for all medical and related treatment; and that a controverted attorney's fee should attach to any benefits awarded. The claimant reserved the issue of permanent disability, if applicable.

The respondents maintained that the claimant did not sustain an injury arising out of and during the course of his employment within the meaning of the Arkansas Workers' Compensation Laws.

The claimant testified in his own behalf. Jerry Powers was called as a witness for the respondents. The record is composed solely of the transcript of the December 3, 2004, hearing containing several exhibits.

From a review of 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 made in accordance with Ark. Code Ann. §11-9-704:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations agreed to by the parties are hereby accepted as fact.
3. The claimant has failed to prove, by a preponderance of the evidence, that he sustained an injury arising out of and during the course of his employment with American Railcar Industries on June 17, 2004.
4. The claimant has failed to prove that his physical problems, need for treatment, and alleged disability after June 17, 2004, were in any way causally related to an employment related incident or injury.

DISCUSSION

The relevant facts in this case are basically undisputed. Although the claimant maintains that he sustained a compensable heat stroke on June 17, 2004, there is no credible evidence of any such injury. While the record does reflect that the claimant voiced complaints of physical problems to his immediate supervisor, which the claimant attributed to his working environment on June 17, 2004, the

evidence does not support any work-related injury. The record does reflect that the claimant had several pre-existing, physical problems, including carotid artery disease which was confirmed by diagnostic testing. It is apparent from the record as a whole, that the claimant's complaints pre-dated the alleged injury.

The claim turns entirely upon the claimant's credibility. A claimant's testimony is never considered uncontroverted. The testimony of an interested party is always considered to be controverted. *Lambert vs. Gerber Products Co.*, 14 Ark. App. 88, 684 S.W.2d 842 (1985); *Nix vs. Wilson World Hotel*, 46 Ark. App. 303, 879 S.W.2d 457 (1994); *Continental Express vs. Harris*, 61 Ark. App. 198, 965 S.W.2d 84 (1998).

In fact, this claim turns more upon the claimant's own subjective belief that his medical condition was related to a compensable heat stroke. It would require sheer speculation and conjecture to attribute the claimant's physical problems and need for treatment beginning on June 22, 2004, to an alleged work-related injury occurring on June 17, 2004. Conjecture and speculation, however plausible, cannot be permitted to supply the place of proof. *Dena Construction Company vs. Hearndon*, 264 Ark. 791, 575 S.W.2d 155 (1979); *Arkansas Methodist Hospital vs. Adams*, 43 Ark. App. 1, 858 S.W.2d 125 (1993).

The claimant, Sammy Lee Lucy, testified in his own behalf. Claimant is forty-eight (48) years old. The claimant only worked for the respondents approximately six (6) weeks. He was employed as a welder. Although it appears that the claimant

exaggerated the temperature in which he was required to work, it is apparent that he worked under extremely hot conditions. On June 17, 2004, the claimant reported to his lead-man, Josh Foster, that he felt he was going to pass out because it was so hot, at which time he was told to stop what he was doing and was taken to the first-aid room. Although the records from the first-aid station were not available, the claimant confirmed that they ran a blood pressure test, as well as temperature test, permitted him to cool down for fifteen (15) to twenty (20) minutes after which he returned to his welding station. The claimant stated that after working an additional ten (10) minutes, he advised Mr. Foster that he was not feeling well and was permitted to, again, cool down and then go home. The claimant did not work for the respondents after June 17, 2004. The claimant first obtained medical treatment on June 22, 2004, at which time he was seen by his family physician, Dr. Roland Hollis. As will be reflected further below, the claimant had been seen by Dr. Hollis prior to reporting to work on June 17, 2004, for a variety of complaints including those which caused Dr. Hollis to recommend a carotid doppler study which confirmed significant plaque in the claimant's bi-lateral internal carotid arteries. When the claimant later took his off-work slips to the employer, he was terminated. The claimant was a probationary employee and was allegedly terminated for excessive absenteeism. Although there was considerable testimony concerning the claimant's termination, it was not an issue before this Commission.

As previously pointed out, the claimant was examined and treated by Dr.

Hollis on June 17, 2004, prior to reporting for his work shift which normally ran from 5:00 p.m. until 1:30 a.m. Dr. Hollis' notes reflect multiple complaints, including seeing double the prior week which the claimant related as being secondary to heat in the factory, left leg numbness, depression, anxiety, and dysphasia at which time Dr. Hollis recommended a carotid doppler test which was subsequently ordered after the claimant returned to Dr. Hollis on June 22, 2004. (Tr.30-33)(Resp. Ex. A, p.7)

The studies ordered by Dr. Hollis confirmed that the claimant had pre-existing carotid artery disease. He also concluded that the claimant may have sustained a heat stroke by history and that the claimant had multiple ischemic infarcts in the right occipital and posterior right parieto-occipital lobes which indicated that the claimant had a deficiency of blood due to constriction of vessels. (Resp. Ex. A, pp.10-13)

The Workers' Compensation Act recognizes cerebrovascular accidents in Ark. Code Ann. §11-9-114 (Repl. 2002) which is set out, in part, below:

(a) A cardiovascular, coronary, pulmonary, respiratory, or cerebrovascular accident or myocardial infarction causing injury, illness, or death is a compensable injury only if, in relation to other factors contributing to the physical harm, an accident is the major cause of the physical harm.

(b)(1) An injury or disease included in subsection (a) of this section shall not be deemed to be a compensable injury unless it is shown that the exertion of the work necessary to precipitate the disability or death was 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 have been the major cause of the physical harm.

In a workers' compensation case, the claimant has the burden of proving, by a preponderance of the evidence, that his claim is compensable, i.e., that his injury was the result of an accident that arose in the course of his employment and that it grew out of, or resulted from the employment. *Ringier American vs. Combs*, 41 Ark. App. 47, 849 S.W.2d 1 (1993); *Carman vs. Haworth, Inc.*, 74 Ark. App. 55, 455 S.W.3d 408 (2001). Further, the claimant must prove a causal connection between the work-related accident and the later disabling injury. *Bates vs. Frost Logging Company*, 38 Ark. App. 36, 827 S.W.2d 664 (1992). The claimant must show a causal relationship between his condition and his employment. *Harris Cattle Company vs. Parker*, 256 Ark. 166, 506 S.W.2d 118 (1974).

There is no presumption that a claim is indeed compensable. *O.K. Processing, Inc., vs. Servold*, 265 Ark. 352, 578 S.W.2d 224 (1979). The party having the burden of proof on the issue must establish it by a preponderance of the evidence. Ark. Code Ann. §11-9-704(c)(2) (Repl. 2002). In determining whether a claimant has sustained his burden of proof, the Commission shall weigh the evidence impartially, without giving the benefit of the doubt to either party. A.C.A. §119-704; *Wade vs. Mr. C. Cavanaugh's*, 298 Ark. 363, 768 S.W.2d 521 (1989); and *Fowler vs. McHenry*, 22 Ark. App. 196, 737 S.W.2d 663 (1987).

There is no credible evidence that the claimant sustained a work-related injury. To the contrary, the record reflects that the claimant's physical problems, need for treatment, and disability, if any, were all related to his pre-existing

condition. A review of the record fails to reveal that the claimant's work on June 17, 2004, was extraordinary and unusual in comparison to the claimant's usual work. Further, there is no credible evidence that some unusual incident occurred which was found to have been the cause of any physical harm. Rather, it appears that the claimant's symptoms and need for medical treatment all pre-existed June 17, 2004. Accordingly, the within claim is hereby respectfully denied and dismissed.

IT IS SO ORDERED.

DAVID GREENBAUM
Chief Administrative Law Judge