

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F411995

BILLIE MCDONALD	CLAIMANT
ELLIOT ELECTRIC COMPANY, INC.	RESPONDENT
TRAVELERS INSURANCE CO. INSURANCE CARRIER	RESPONDENT

OPINION FILED SEPTEMBER 9, 2005

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON in Springdale, Washington County, Arkansas.

Claimant represented by JASON WATSON, Attorney, Fayetteville, Arkansas.

Respondents represented by GUY ALTON WADE, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on June 21, 2005, in Springdale, Arkansas.

A pre-hearing conference was held in this claim, and as a result a pre-hearing order was entered in the claim on April 15, 2005. This pre-hearing order set forth the stipulations offered by the parties, the issues to litigate and the contentions thereto.

The following stipulations were submitted by the parties and are hereby accepted:

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

2. On September 24, 2004, the relationship of employee-employer-carrier existed between the parties.

3. The claimant is entitled to a weekly compensation rate of \$453.00 for temporary total disability and \$340.00 for permanent partial disability.

By agreement of the parties the issues to litigate are limited to the following:

1. Compensability of the claimant's injuries to multiple body parts.
2. Related medical.
3. Temporary total disability from September 24, 2004, through November 15, 2004.
4. Attorney's fees.

In regard to the foregoing issues the claimant contends that he sustained multiple bodily injuries when he fell out of his boom truck on September 24, 2004. The claimant has incurred reasonable and related medical expenses for his multiple injuries and remained temporarily totally disabled under the doctor's care from September 24, 2004, through November 15, 2004. This claim has been controverted and the claimant's attorney is entitled to a full controverted attorney fee. The claimant also contends that he had an unexplained fall and/or his injuries are due to positional risk.

In regard to the foregoing issues the respondents contend that the claimant did not sustain a compensable injury within the course and scope of his employment. The claimant's complaints are the result of an idiopathic fall and not the responsibility of the respondents.

The documentary evidence submitted in this matter consists of the Commission's pre-hearing order marked Commission's Exhibit No. 1. The claimant submitted medical evidence marked Claimant's Exhibit No. 1. The respondents submitted medical evidence marked

Respondents' Exhibit No. 1. All these exhibits were admitted without objection.

DISCUSSION

The claimant testified that he had worked for SWEPCO for thirty-five years before he retired on November 3, 2000. The claimant testified that he enjoyed his retirement but was under his wife's feet so he returned to work for Red Simpson repairing street lights under contract with SWEPCO. The claimant testified that he worked with Red Simpson for approximately a year and a half until they lost their contract. The claimant testified that he was out of work for about one year and then was called to help the respondent doing the same job that Red Simpson had contracted with SWEPCO to do. The claimant explained that the job which he did for Red Simpson as well as for the respondent was to work out of a bucket truck to repair street lights. The claimant testified that the respondent provided the bucket truck and that SWEPCO furnishes the lights, bulbs and photo cells. The claimant testified that he used his own private tools to do his work. The claimant testified that he would normally pick up his work orders at around 7:00 in the morning and would work until he had his assignments completed indicating that this would vary depending on the jobs.

The claimant testified that on September 24, 2004, he had been into the office to pick up the light fixtures and had been working all morning. The claimant testified that sometime after lunch he had an order over at the Woodland Junior High School in Fayetteville and, when he found the pole, he set his truck and went

up and checked the light. The claimant testified that he checked out the light and concluded that it had shorted out and took it down, put it in the bucket with him and started lowering the bucket. The claimant testified that the next thing he remembers he woke up in the ICU unit having no memory of how he got there. The claimant testified that it was just a normal business day, not unusually hot and that he was feeling great. The claimant testified that the lighting unit which he was working with weighed approximately thirty to forty pounds and that the controls for the bucket truck are in the bucket with him. The claimant testified that he was approximately thirty to thirty-five feet in the air. The claimant testified that it took him about thirty to forty-five minutes to remove the fixture from the pole and to put it in the bucket to take down with him. The claimant testified that he was not electrocuted or shocked while he was removing the fixture and that the last thing he remembered was lowering the bucket of the truck.

The claimant testified that as a result of his fall he had a bruised brain, two lacerations on his elbow, five broken ribs and a broken collar bone. The claimant testified that his accident occurred on Friday and he remained in the hospital until Monday. The claimant testified that the doctors took him off work and that he had follow up treatment for his ribs and collar bone. The claimant testified that when Dr. Mitchell released him to return to work on November 15, 2004, he did not have any restrictions and he returned to his normal job. The claimant testified that the

respondent returned him to his job and they did not require a physical for his return to work, only a release from Dr. Mitchell.

The claimant testified that he has never had a workers' compensation claim nor any previous personal injury claims. The claimant testified that seven years ago he did have bypass surgery to correct five blockages. The claimant testified that he had a good result from this surgery and was off work for approximately four months. The claimant testified that he returned to work, with no restrictions, for SWEPCO after his heart surgery. The claimant testified that in September 2004 he was taking prescription medicine in the form of Lipitor, blood pressure medicine, a baby aspirin and that he has a pain pill for his back pain which he takes when needed. The claimant testified that he had not taken any pain medication on September 24, 2004, because he takes this medication in the evening. The claimant testified that, in his opinion, he does not have any side effects or adverse effects from any of his prescribed medications. The claimant testified that he has never had problems with dizziness, balance, vertigo nor has he ever passed out or blacked out. The claimant testified that he does not have any problems or residual effects from his injury to date and is back doing the same work for the respondent as he previously had done.

On cross examination, the claimant agreed that his medical bills have been handled through his private insurance company or perhaps Medicare. The claimant testified that Dr. Haisten and Dr. Weiss are the two surgeons who did his bypass surgery seven years

ago and that Dr. Haisten has followed him since then. The claimant testified that he had been diagnosed with high blood pressure prior to his bypass surgery and had been taking Lipitor to control his blood pressure. The claimant again agreed that he has no memory of what happened on September 24, 2004, after he picked up the light and started the bucket down. The claimant agreed that to his knowledge there was no malfunction with the bucket truck or any of his equipment. The claimant testified that it was just a normal day for September not remembering it to be real hot but just normal, further stating that he is used to working outside because he does that every day.

The medical records set forth that the claimant was seen at Washington Regional Medical Center on September 24, 2004, after being delivered there by ambulance. The triage sets forth that the claimant possibly fell approximately five feet although the patient is unable to recall the event and was initially confused. It is noted that his vital signs include his blood pressure being at 172 over 102. Upon examination, it is noted that the claimant was alert, oriented with normal respiration. The claimant's skin was warm and dry and his color was normal. The doctor notes that the claimant is having a lot of pain over his right ribs laterally and in his back. It is further noted that the claimant has a laceration on the right side of his head. It is noted that the claimant's cardiovascular examination reveals that his heart sounds normal. The claimant was diagnosed with having five fractured ribs on the right, a contusion on his left frontal lobe, that his right

clavicle is fractured and other bruising. On September 24, 2004, Dr. Stephen Wood writes that the claimant was unconscious at the scene and it is unclear as to why he fell, there being no evidence of an electrical shock. Dr. Woods notes that the patient does not recall any prodromal syndrome prior to his fall and does not really understand why he fell. The doctor notes that the claimant is complaining of right rib pain and a headache with no shortness of breath described and no abdominal pain described. Upon examination it is noted that the claimant's heart rate and rhythm are normal and regular without murmurs or rubs. The claimant's electrocardiogram reveals normal sinus rhythms without acute changes. The claimant was assessed with having a fall injury with closed head injury with fractured ribs and right clavicle fracture. A CT scan of the claimant's brain revealed a small amount of acute subarachnoid blood in the left frontal lobe and that he has a large right parietal subgaleal hematoma present. X-rays taken in the hospital revealed that the claimant has a mid right clavicle fracture and multiple right sided rib fractures. Dr. Woods writes on September 27 in the discharge diagnosis that the claimant had a traumatic injury secondary to a fall resulting in subarachnoid bleed with frontal contusion, multiple right rib fractures and right clavicle fracture. It is further noted that the claimant was treated by Dr. Larry Armstrong and Dr. Ray Mitchell. Dr. Wood writes that the claimant was a 66-year-old patient who fell approximately five feet out of a bucket truck. The doctor notes that the claimant was unconscious at the scene and was evaluated in

the ER and complained of right chest pain and a headache. It is also noted that the claimant demonstrated evidence of a subarachnoid bleed and also a frontal lobe contusion. The doctor writes that the claimant had multiple fractures of the right chest without evidence of pneumothorax or hemothorax clinically and then he also had a right clavicle fracture. There is a release from work form signed on October 13, 2004, by Dr. Raye Mitchell releasing the claimant from work for one month. Dr. Mitchell writes on November 15, 2004, that the claimant wants to go back to regular duty work, therefore, the doctor released him to full regular duty with no permanent disability related to his clavicle fracture.

The claimant was being seen by Dr. Haisten on March 14, 2002, for follow up for his hypertension, noting that he feels fine with no problems and no chest pain. It is noted that the claimant's blood pressure is 138 over 78 with a pulse rate of 72. Dr. Haisten continued to follow the claimant on September 19, 2002, noting that he has no chest pain and no angina with a blood pressure rate of 140 over 78 and a pulse rate of 72. Dr. Haisten notes on March 30, 2004, that the claimant feels fine and his blood pressure is ok, it is noted that the claimant reports that he is doing well but was awakened and noted his heart to be rapid but he would take a deep breath and it would resolve. The claimant's blood pressure was 130 over 82 with a pulse rate of 72. Dr. Haisten again writes on September 7, 2004, that the claimant is doing well, no chest pain, with a blood pressure of 122 over 84 and a pulse rate of 50.

After a review of this complete record, I find that the claimant has proven by a preponderance of the evidence that he sustained a compensable unexplained fall while working for the respondent.

For an employee's injury to be compensable under the Arkansas workers' Compensation Law, it must result from an injury "arising out of and in the course of employment." Ark. Code Ann. §11-9-410 (Repl. 1996). An injury occurs "in the course of employment" when it occurs "within the time and space boundaries of the employment, while the employee is carrying out the employer's purpose, or advancing the employer's interests directly or indirectly." City of El Dorado v. Sartor, 21 Ark. App. 143, 729 S.W. 2d 430 (1987). The phrase "arising out of the employment" refers to the origin or cause of the accident, so it must be shown that a causal connection exists between the injury and the employment. Gerber Products v. McDonald, 15 Ark. App. 226, 691 S.W. 2d 879 (1985). In order for an injury to arise out of the employment, it 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).

The Arkansas workers' Compensation Law does not contain a statutory presumption that "unexplained injuries" are compensable. Nevertheless, the Arkansas Courts have clearly indicated that an "unexplained injury" is compensable under the Arkansas workers' Compensation law. See, Moore v. Darling Store Fixtures, 22 Ark.

App. 21, 732 S.W. 2d 496 (1987); Roc-Arc Water Co. v. Moore, 10 Ark. App. 349 (1984). As the Court of Appeals explained in Moore:

When one suffers an injury at work, the cause is, obviously, either known or unknown. Larson's treatise on workers' compensation law states that the most common example of a situation in which the cause of the harm is unknown is the unexplained fall in the course of employment and that most courts confronted with that situation have seen fit to award compensation. 1 Larson, *The Law of Workmen's Compensation*, § 10.31, at 3-87 (1985). However, injuries from idiopathic falls do not arise out of the employment unless the employment contributes to the risk or aggravates the injury by, for example, placing the employee in a position which increases the dangerous effect of the fall, such as on a height, near machinery or sharp corners, or in a moving vehicle. Larson § 12.11.

The word "idiopathic" is defined in Webster's Third New International Dictionary, Unabridged (1976), as (1) peculiar to the individual, (2) arising spontaneously or from an obscure or unknown cause. Although the two concepts are frequently confused, Larson says "unexplained-fall cases begin with a completely neutral origin of the mishap, while idiopathic-fall cases begin with an origin which is admittedly personal and which therefore requires some affirmative employment contribution to offset the prima facie showing of personal origin." Larson § 12.11, at 3-314.

Our Arkansas cases have followed the above rules. See Slaughter v. Phillip Williams Painting Co., Full Commission opinion E416028 (March 21, 1997).

In the present case, the claimant had no history of blackouts or dizzy spells and although he had had heart trouble in the past, his doctors' reports have indicated that he was doing well and that his regular check ups were to follow and to monitor his condition. Certainly the claimant's work put him at risk of fall as he has

testified that he worked alone in a bucket truck as much as thirty feet off of the ground. It has been noted that when the claimant was admitted to the ER on the date of his fall his blood pressure was elevated, however, after experiencing a fall fracturing several ribs and his clavicle it would seem quite logical that an individuals' blood pressure would be slightly elevated. It is noted, however, that his pulse rate was similar or close to pulse rates recorded by Dr. Haisten on his several visits. Therefore, the respondents should pay for this claimant's medical treatment for his compensable injury subject to any credit for benefits provided by another carrier. See Ark. Code Ann. §11-9-411. I further find that the claimant is entitled to temporary total disability from September 25, 2004, through November 15, 2004. The claimant has testified and the doctors' medical records indicate that the claimant's was off work at the recommendation of his treating physicians until November 15, 2004, when he was released by Dr. Mitchell to return to full duty work.

FINDINGS & CONCLUSIONS

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.
2. On September 24, 2004, the relationship of employee-employer-carrier existed between the parties.
3. The claimant is entitled to a weekly compensation rate of \$453.00 for temporary total disability and \$340.00 for permanent partial disability.

4. The claimant has proven by a preponderance of the evidence that he sustained an unexplained fall while working for the respondent on September 24, 2004, resulting in multiple injuries. See discussion above.

5. The respondents should pay for the cost of all reasonable and necessary medical treatment for this claimant's compensable injury subject to the off sets as provided by Arkansas law at 11-9-411. See discussion above.

6. The respondents should pay temporary total disability to this claimant from September 25, 2004, through November 15, 2004. See discussion above.

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

8. The claimant's attorney is entitled to the maximum statutory attorney's fee based on the benefits awarded herein.

ORDER

The claimant has proven by a preponderance of the evidence that he sustained a compensable injuries while working for the respondent on September 24, 2004.

The respondents should pay for all of this claimant's reasonable and necessary medical treatment for his various compensable injuries subject to a dollar for dollar set off as provided by Ark. Code Ann. §11-9-411.

The respondents should pay temporary total disability to this claimant from September 25, 2004, through November 15, 2004.

The respondents shall pay to the claimant's attorney the maximum statutory attorney's fee on the additional benefits awarded herein, with one half of said attorney's fee to be paid by the respondents in addition to such benefits and one half of said attorney's fee to be withheld by the respondents from such benefits.

All benefits herein awarded which have heretofore accrued are payable in a lump sum without discount.

This award shall bear the maximum legal rate of interest until paid.

IT IS SO ORDERED.

ELIZABETH DANIELSON
ADMINISTRATIVE LAW JUDGE