

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F409564

DAVID REEVES, Employee	CLAIMANT
CEDAR RAPIDS STEEL TRANSPORT, Employer	RESPONDENT
LIBERTY MUTUAL INSURANCE COMPANY, Carrier	RESPONDENT

OPINION FILED JULY 20, 2005

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Springdale, Washington County, Arkansas.

Claimant represented by EVELYN BROOKS, Attorney, Fayetteville, Arkansas.

Respondents represented by JAMES A. ARNOLD, II, Attorney, Fort Smith, Arkansas.

STATEMENT OF THE CASE

On June 8, 2005, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on November 10, 2004, and a pre-hearing order was filed on that same date. A copy of the pre-hearing order has been marked Commission's Exhibit #1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The relationship of employee-employer-carrier existed among the parties from May 19, 2004 through June 17, 2004.
3. Claimant was earning sufficient wages to entitle him to compensation at the maximum rate.
4. Respondents have controverted this claim in its entirety.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Compensability of injury to left lower extremity.
2. Temporary total disability benefits.
3. Medical expenses.

4. Attorney fee.

The claimant contends he was injured on June 10, 2004 while driving for an extended period of time and developed a blood clot. His injury was diagnosed as deep vein thrombosis in his lower extremity by the VA Medical Center. He contends he is entitled to temporary total disability, related medical, and a controverted attorney fee.

The respondents contend the claimant did not sustain a compensable injury which arose out of and in the course of his employment with CRST International, Inc.

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 witness and to observe his demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on November 10, 2004, and contained in a pre-hearing order filed that same date, are hereby accepted as fact.

2. Claimant has failed to prove by a preponderance of the evidence that he suffered a compensable injury to his left lower extremity while employed by the respondent.

FACTUAL BACKGROUND

The claimant is a very nice 50-year-old gentleman who began working as a long haul truck driver for the respondent in May 2004. Prior to working for the respondent claimant had previously farmed for more than 20 years and had also worked in telephone cable repair, a machine shop, and a partitions factory.

Claimant drove his truck with another driver so that his truck was on the road constantly. Claimant testified that on June 10, 2004 he stopped to refuel his truck and as

he stepped out of his truck he felt a pain in his left leg like a pulled muscle. The pain in claimant's leg persisted and he continued to drive for another week or so with the pain steadily increasing. On or about June 23 the claimant asked a massage therapist about his symptoms and was informed that he should seek medical attention. As a result, claimant sought medical treatment from the VA Hospital on June 23, 2004. Testing revealed a deep vein thrombosis and claimant was hospitalized at the VA Hospital from June 23, 2004 through June 30, 2004. Claimant was treated conservatively with medication and bed rest. Since his discharge from the hospital, claimant has continued to be treated with medication which must be adjusted periodically.

Claimant has filed this claim contending that he suffered a compensable injury in the form of deep vein thrombosis to his left lower extremity. He seeks payment of medical expenses, temporary total disability benefits, and a controverted attorney fee.

ADJUDICATION

Unfortunately for the claimant, his claim is not for the typical compensable injury caused by an injury or accident. Instead, claimant's claim is for an injury in the form of deep vein thrombosis which is a cardiovascular injury. In *Reed v. ConAgra Frozen Foods*, Full Commission Opinion filed February 2, 1995 (E317744), the Full Commission held that a claim for a thrombosis is a claim for a cardiovascular injury; therefore, it is governed by the provisions codified at A.C.A. §11-9-114. A.C.A. §11-9-114 states as follows:

(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 extra-

ordinary and unusual in comparison to 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.

(2) Stress, physical or mental, shall not be considered in determining whether the employee or claimant has met his burden or her burden of proof.

Thus, in order for claimant to prove compensability, he must show under A.C.A. §11-9-114 that the exertion associated with his accident was extraordinary and unusual compared to his usual work or that some unusual and unpredicted incident occurred which was the major cause of his physical harm. *Uli Barry v. Jim Wood Company*, 79 Ark. App. 354, 87 S.W. 2d 846 (2002); *Mountain Home Manufacturing v. Hafer*, 66 Ark. App. 127, 991 S.W. 2d 127 (1999).

In this particular case, after reviewing the evidence impartially, without giving the benefit of the doubt to either party, I find that claimant has failed to meet his burden of proving by a preponderance of the evidence that the work he was performing at the time his thrombosis occurred was extraordinary and unusual in comparison with his usual work or that some unusual and unpredicted incident occurred which was the major cause of his injury. Claimant testified at the hearing that he was simply performing his usual truck driving duties at the time he first felt pain in his leg.

Q. Okay. What you were doing was your usual and expected truck driving duties. Is that correct?

A. That's correct.

Q. Okay. There was nothing extraordinary or unusual about anything that happened during the month, or so, that you worked for CRST, other than the fact that you developed a blood clot. Correct?

A. That's the only thing. It - - it actually went pretty smooth.

Claimant went on to testify that he was simply getting out of his truck to refuel as he

normally did when he first felt the pain.

In summary, the claimant contends that he suffered a compensable injury in the form of deep vein thrombosis as a result of his truck driving duties with the respondent. A thrombosis injury is a cardiovascular injury which is governed by the provisions of A.C.A. §11-9-114. Pursuant to §11-9-114, in order to be compensable a claimant must show that the exertion of work necessary to precipitate the injury was extraordinary and unusual in comparison to the employee's usual work or alternatively that some unusual and unpredicted incident occurred which was the major cause of the physical harm. Based upon the evidence presented, I find insufficient evidence that the claimant was performing extraordinary or unusual work in comparison to his usual work at the time his thrombosis developed. Furthermore, I find that no unusual or unpredicted incident occurred which was the major cause of the claimant's physical harm. Absent this evidence, the claimant cannot prove a compensable injury.

ORDER

Claimant has failed to prove by a preponderance of the evidence that he suffered a compensable injury in the form of deep vein thrombosis as a result of his employment with the respondent. Therefore, his claim for compensation benefits is hereby denied and dismissed.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE