

**BEFORE THE ARKANSAS WORKERS' COMPENSATION  
COMMISSION**

**CLAIM NO. F405956**

**FRED SCOTT, EMPLOYEE**

**CLAIMANT**

**GEORGIA-PACIFIC CORPORATION,  
EMPLOYER**

**RESPONDENT**

**SELF-INSURED (SEDGWICK CLAIMS  
MANAGEMENT SERVICES, INC., TPA),  
INSURANCE CARRIER**

**RESPONDENT**

**OPINION FILED JUNE 16, 2005**

Hearing before Administrative Law Judge Cynthia Estes Rogers on March 18, 2005, in Monticello, Drew County, Arkansas.

Claimant represented by Mr. Kenneth E. Buckner, Attorney at Law, Pine Bluff, Arkansas.

Respondents represented by Mr. Andrew M. Ivey, Attorney at Law, Little Rock, Arkansas.

A hearing was held on March 18, 2005, to determine whether the claimant sustained compensable injuries to his head and back on May 14, 2004, for which he is entitled to indemnity and medical benefits.

The parties stipulated to the existence of the employer-employee relationship on May 14, 2004. It was further stipulated that the claimant's earnings were sufficient to entitle him to weekly indemnity benefits of \$338.00 for temporary total disability and \$291.00 for permanent partial disability benefits.

Claimant contends that he sustained compensable injuries to his head and back on May 14, 2004, when he fell six feet or more from an area where he was working to the floor. Claimant contends he is entitled to temporary total disability benefits from May 14, 2004, through May 25, 2004, and again from May 27, 2004, through December 17, 2004, when he returned to work. Claimant contends that he is also entitled to medical expenses, and attorney's fees, as respondents have controverted the entire case. Claimant requests that the issue of permanency be held in abeyance.

Respondents contend that claimant is not entitled to the requested benefits, as he cannot establish that he sustained any accidental injury resulting in objective findings to his back during the course and scope of his employment for respondent-employer on May 14, 2004.

#### **STATEMENT OF THE CASE**

Claimant is thirty-one years old and testified that he has been employed with respondent-employer for approximately thirteen years. Claimant testified that he was working as a glue line operator in the "hole" as a layer on May 14, 2004, when he fell approximately six feet or more from a catwalk at his work station area, while in the course and scope of his employment with respondent-employer, injuring his back and head. Claimant testified that he had returned approximately five minutes before his accident from his lunch break. When he returned, there was debris on the floor of his work station. He testified that he bent down to try to remove some debris from his

shoe and held on to the railing for support, when the railing “gave way.” Claimant admitted that at his deposition, he stated that he had fallen through the railing; however, he testified credibly at the hearing in this matter that he does not remember exactly *how* he fell – he just knows that he wound up on the ground below, on his back, and was experiencing head and back pain.

Although there were no witnesses to the actual fall, it is undisputed that on the date of injury, claimant’s supervisor, Dino Heintze, found claimant lying on his back on the floor below claimant’s work area, crying and saying, “My head, my head,” and that claimant was taken by ambulance to Ashley Memorial Hospital in Crossett. Mr. Heintze testified that he had been alerted and told by Gerald Brown, claimant’s work partner, that claimant had fallen, although no one testified as to witnessing the actual fall. Mr. Heintze testified simply that he knew that one minute claimant was on the catwalk, and the next minute he was on the floor. Mr. Heintze testified that he stayed with claimant until the ambulance arrived.

Claimant testified that prior to the accident, he was wearing his safety helmet, as he is required to do by respondent-employer. Mr. Heintze testified that claimant’s helmet was lying on the ground a short distance away from claimant’s body, when he arrived to assist claimant. Mr. Heintze testified that he later took claimant’s helmet to the office. While it is unclear whether claimant actually lost consciousness, Mr. Heintze did testify that claimant was certainly not in a position to help himself when

he found claimant lying on the floor. Mr. Heintze further testified that he has always known claimant to be an honest, hard-working employee, and if claimant said he fell from his work-station, then Mr. Heintze would have no reason to doubt that to be true.

Claimant testified that he had previously reported a break in the top weld of the railing supporting the catwalk to his line attendant, Jimmy Davis. Mr. Heintze testified that he was made aware by Mr. Davis of the break in the top rail. Roger Watson, maintenance supervisor for respondent-employer, testified that the rail was, indeed, broken when he inspected it following the accident; however, he claims he was unaware of the break prior to claimant's accident. Testimony revealed that the railings have not only been repaired since claimant's accident, but they have actually been reinforced with additional bars for added support and safety.

Medical records indicate that claimant had, on two prior isolated occasions, complained of mid-back pain – once in April of 2001, and another time in March of 2003. Claimant testified that he did not even remember these incidents at the time he was questioned about them at his deposition; but, after the deposition, when his recollection was refreshed from the records produced by respondents, he recalled one of the two incidents in which he fell on some stairs at work and received a minor injury to his back. Notably, there was no medical evidence introduced of an ongoing history of back problems or complaints by claimant, prior to the May 14, 2004, accident at issue in this case.

Respondents called a forensic expert, Ed Riddick, to testify about the mechanics of claimant's fall and whether, in his opinion, the accident could have occurred in the manner in which claimant contends it did. Mr. Riddick admitted that he was unable to personally observe the scene of the accident as it was on the date of claimant's injury, as it had been substantially changed by the time Mr. Riddick became involved in the case. He was able, however, to view photographs that were purportedly taken prior to the alterations following claimant's injuries.

At Mr. Riddick's direction, respondents had constructed a model railing or apparatus to demonstrate the railing in question, complete with a break in the weld at the top of one end, as claimant had described. This apparatus was used at length during the hearing in an attempt to quash the credibility of claimant's description of his accident, with various witnesses, as well as counsel, pushing on the broken railing in an attempt to demonstrate how claimant may have fallen.

Medical records reflect that claimant was initially treated at Ashley Memorial in Crossett and was then transferred, later that night, to Jefferson Regional Medical Center, where he was given pain medication and released with a note to follow up with his physician. He then began being seen by Dr. Mark Malloy, following the accident, and Dr. Malloy noted that claimant was suffering from spasm and complaining of pain. He ordered an MRI, which revealed that claimant had varying amounts of fluid present in the L2-3 through L4-5 posterior facets consistent with

synovitis. He was diagnosed with multilevel mid-lumbar posterior facet synovitis. Testimony revealed that respondents apparently paid for two or three visits to Dr. Malloy. Dr. Malloy then referred claimant to Dr. Vincent Forte, a doctor in the Monroe area, whom claimant continued to see through December of 2004.

The records evidence that claimant was taken off work by his treating physicians from the date of injury through May 25, 2004. He then attempted to return to work for one day, but was in too much pain. He was then taken off work again from May 27, 2004, through December 17, 2004, when it was stipulated that he returned to work. He was released by Dr. Forte at that time with restrictions pursuant to a Functional Capacity Evaluation (FCE) claimant underwent on October 14, 2004.

The results of the FCE showed that claimant gave consistent and reliable effort. The restrictions he was given were light physical work above the waist and medium physical work below the waist. As of the date of the hearing, claimant had not been issued any impairment rating.

It is unclear from the evidence why claimant did not, initially, file a claim for workers' compensation, since he evidently did believe his accident was work-related. On May 20, 2004, claimant filed for short-term disability. On that first Nelson Trust Statement for Short-Term Disability, introduced into evidence by respondents, claimant checked "Yes" in answer to the question, "Did your work cause this condition," and he noted the date of injury as "5-14-04." However, he checked "No"

in answer to the question, “Have you or will you file a claim with workers’ compensation?” His employer checked “No” in response to “Is this disability the result of occupational disease or injury arising in the course of employment?” However, his physician checked “Yes,” it is “due to injury or illness arising out of employment.”

Notably, however, on claimant’s June 16, 2004, Nelson Trust Statement for Short-Term Disability, again introduced into evidence by respondents, claimant checked “Yes,” in answer to the question, “Did your work cause this condition,” and he noted the date of injury as “5-14-04.” However, on this statement, although he checked “No” in answer to the question, “Have you or will you file a claim with workers’ compensation,” his employer checked “Yes” in response to “Is this disability the result of occupational disease or injury arising in the course of employment” question, and “Yes,” in answer to the question of whether a workers’ compensation claim had been filed. Employer also noted that the claim had *not* been accepted. Claimant’s physician, just as in the first statement, checked “Yes,” that the condition was “due to injury or illness arising out of employment.”

All of the medical evidence introduced from claimant’s treating physicians mentions claimant’s back condition having occurred as a result of his work-related fall on May 14, 2004. He is noted as having “spasm” and “synovitis,” or fluid in the mid-lumbar area. Medical records reflect that claimant was to be scheduled for

lumbar facet injections; however, due to his claim being controverted by respondents and insurance concerns, he did not have the injections. He was noted as receiving some pain relief by taking Mobic each day for pain control.

Claimant testified that he still experiences head pain some days and has to take off work as a result. He testified that he still has back pain and that it is no better. He testified that no treatment he has received has really helped his back, but he was eager to return to work and has now returned to his old job as a glue line operator for respondent-employer.

#### **FINDINGS OF FACT**

1. All stipulations agreed to by the parties herein are accepted as fact;
2. Claimant had an unexplained fall while in the course and scope of his employment with respondent-employer on May 14, 2004;
3. Claimant has proven by a preponderance of the evidence that he sustained compensable back and head injuries on May 14, 2004, as a result of his unexplained fall;
4. Claimant is entitled to temporary total disability indemnity benefits from the date of injury through May 25, 2004, and from May 27, 2004, through December 17, 2004, when he returned to work for respondent-employer;

5. Claimant is entitled to all medical benefits not previously paid by respondents, both past and future, for his compensable injuries;
6. The issue of permanency is held in abeyance;
7. Respondents are entitled to a setoff for any medical benefits paid by the claimant's group health insurance carrier and for any and all short-term disability benefits and/or unemployment benefits received by claimant, if any;
8. Respondents have controverted the entire case.

### **DISCUSSION**

In order to prove compensability of a claim, a claimant must prove by a preponderance of the evidence that: (1) the injury arose out of and in the course of his employment; (2) the injury caused internal or external physical harm to the body which required medical services or resulted in disability or death; (3) the injury was a major cause of the disability or need for treatment; and (4) the injury must be established by medical evidence supported by objective findings. *See Ark Code Ann. § 11-9-102(4)(A)(ii)(a) and 11-9-102(4)(E)(ii); West v. Arkansas Electric Cooperative Corp.*, CA 03-1450 (September 15, 2004); *Crudup v. Regal Ware, Inc.*, 341 Ark. 804, 20 S.W.3d 900 (2000); *Kildow v. Baldwin Piano*, 333 Ark. 335, 969 S.W.2d 190 (1998). In addition to satisfying the “major cause” requirement, however, a claimant must also prove a causal connection between his employment and the injury. *Id.*

Causation remains an essential element to be proven by a claimant in order to establish a claim of compensability.

Objective findings are those that cannot come under the voluntary control of the claimant. Ark. Code Ann. § 11-9-102(16)(A)(I). Medical opinions addressing compensability must be stated within a reasonable degree of medical certainty. Ark. Code Ann. § 11-9-102(16)(B); *Smith-Blair, Inc. v. Jones*, 77 Ark. App. 273, 72 S.W.3d 560 (2002). Speculation and conjecture cannot substitute for credible evidence. *Id.* Further, the Commission has the authority to accept or reject medical opinions, and its resolution of the medical evidence has the force and effect of a jury verdict. *Jim Walter Homes Travelers Ins. v. Beard*, 82 Ark. App. 607, 120 S.W.3d 160 (2003).

Questions of credibility and the weight and sufficiency to be given evidence are matters within the province of the Commission. *See Smith-Blair, Inc. v. Jones, supra; Swift-Eckrich, Inc. v. Brock*, 63 Ark. App. 188, 975 S.W.2d 857 (1998). The Commission is not required to believe the testimony of the claimant or any other witness, but may accept and translate into findings of fact only those portions of the testimony it deems worthy of belief. *Smith-Blair, Inc. v. Jones, supra; Arnold v. Tyson Foods, Inc.*, 64 Ark. App. 245, 983 S.W.2d 444 (1998). Furthermore, it is well established that it is within the Commission's province to weigh all the medical evidence and to determine what is most credible. *Minnesota Mining & Mfg. v. Baker*,

337 Ark. 94, 989 S.W.2d 151 (1999). The Commission is entitled to review the basis for a doctor's opinion in deciding the weight and credibility of the opinion and medical evidence. *Smith-Blair, Inc. v. Jones, supra*; *Maverick Transp. v. Buzzard*, 69 Ark. App. 128, 10 S.W.3d 467 (2000).

Respondents assert that claimant's story has changed in regard to the mechanics of his fall on May 14, 2004, and that as a result, claimant has failed to prove by a preponderance of the evidence that he sustained an injury "caused by" a specific incident, identifiable by time and place of occurrence. Respondents' assertion is without merit. It is evident that claimant's uncertainty about the circumstances of his injury is an obvious consequence of the fact that he hit his head as he fell, knocking his safety helmet off his head, and possibly being knocked temporarily unconscious. Obviously, claimant's recollection of the mechanics of his fall would be vague.

Further, claimant's supervisor, Dino Heintze, testified that Gerald Brown, claimant's work partner, told him that claimant had fallen. Further, Mr. Heintze testified that he knew claimant to be on the catwalk, in his work station, just prior to seeing him on the ground below. Moreover, Mr. Heintze testified that he has known claimant to be an honest, hard-working employee, and if claimant said he fell from his work-station, Mr. Heintze would have *no* reason to doubt that assertion to be true.

Respondents make much ado about the mechanics of claimant's fall, going so far as to construct an apparatus to use demonstratively to prove that claimant's fall could not have happened the way he claimed it did in his deposition; however, the mechanics of his fall, in this case, are immaterial. The fact is he was in his work station, doing his job, and then he was on the floor below, injured. Clearly, claimant had an unexplained fall, and the Arkansas Supreme Court has held that when a truly unexplained fall occurs while the employee is on the job and performing the duties of his employment, the injury resulting therefrom *is compensable*. *ERC Contractor Yard & Sales v. Robertson*, 335 Ark. 63, 977 S.W.2d 212, (1998).

The Arkansas Court of Appeals has distinguished injuries sustained due to an unexplained cause from injuries where the cause is idiopathic.

An idiopathic fall is one whose cause is personal in nature, or peculiar to the individual. 1 LARSON, WORKERS' COMPENSATION LAW, §§ 12.11 (1998); *see also Kuhn v. Majestic Hotel*, 324 Ark. 21, 918 S.W.2d 158 (1996); *Little Rock Convention & Visitors Bur. v. Pack*, 60 Ark. App. 82, 959 S.W.2d 415 (1997); *Moore v. Darling Store Fixtures*, 22 Ark. App. 21, 732 S.W.2d 496 (1987). 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, which increases the dangerous effect of the fall. LARSON, *supra*.

*Whitten v. Edward Trucking/Corporate*, CA 03-1238 (Ark. App. 6-23-2004) (*quoting ERC Contractor Yard & Sales v. Robertson, supra* at 71, 212).

A workers' compensation claimant bears the burden of proving 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. *Moore v. Darling Store Fixtures, supra*. "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. *See Little Rock Convention & Visitors Bureau, supra*. As previously stated, when a truly unexplained fall occurs while the employee is on the job and performing the duties of her employment, the injury resulting therefrom is compensable. *Id.*

In *ERC Contractor Yard & Sales, supra*, the Supreme Court found that although the claimant's fall was caused by his alcohol withdrawal, which was a condition *personal* to him, his job requirement of working on scaffolding twelve to fifteen feet above the ground *increased the dangerous effect of the fall*. *Id.* Therefore, the court therein concluded that substantial evidence supported the Commission's finding that the workman suffered a *compensable* idiopathic fall. *Id.*

In the instant case, the claimant suffered a truly unexplained fall; however, even if his fall had been caused by some condition *personal* to him, which there is absolutely no evidence of in this case, the fact that a job requirement of his was to work six or more feet above the ground on a catwalk certainly increases the dangerous effect of any potential fall and, as such, would arguably be compensable, even if it

were idiopathic. At any rate, in this examiner's opinion, claimant has proven by a preponderance of the credible evidence that he sustained a compensable unexplained fall that caused injuries to his head and back on May 14, 2004.

Although medical records indicate that claimant had, on two prior isolated occasions, complained to a doctor of mid-back pain, there was no evidence offered of any *ongoing history* of back problems or pain on claimant's part; and, in fact, the last time he had mentioned mid-back pain to a doctor was in March of 2003, over one year prior to the accident at issue herein. The Arkansas Court of Appeals has held that if a claimant's disability arises soon after the accident and is logically attributable to it, with nothing to suggest any other explanation for the employee's condition, there is no substantial evidence to sustain the Commission's refusal to make an award. *See Wentz v. Service Master*, 75 Ark. App. 296, 57 S.W.3d 753 (2001).

For all of these reasons, it is this examiner's opinion that claimant has proven by a preponderance of the credible evidence that he sustained compensable injuries to his head and back on May 14, 2004, and is entitled to all indemnity and medical benefits for said injuries, as a result.

### **AWARD**

Respondents are directed to pay the claimant all benefits to which he is entitled in accordance with the findings of fact above.

Respondents are entitled to a setoff for any medical benefits paid by the claimant's group health insurance carrier and for any and all short-term disability benefits and/or unemployment benefits received by claimant, if any.

Respondents are further directed to pay the claimant's attorney, Mr. Kenneth E. Buckner, the maximum attorney's fee on this award pursuant to Ark. Code Ann. § 11-9-715.

IT IS SO ORDERED.

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CYNTHIA ESTES ROGERS  
Administrative Law Judge