

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F506856**

**LARRY GREER, EMPLOYEE**

**CLAIMANT**

**ROBERTSON, INC., EMPLOYER**

**RESPONDENT**

**ST. PAUL TRAVELERS INS. CO, CARRIER**

**RESPONDENT**

**OPINION FILED FEBRUARY 13, 2006**

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on December 2, 2005, at Jonesboro, Craighead County, Arkansas.

Claimant appeared pro se.

Respondents represented by the HONORABLE GUY ALTON WADE, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was conducted in the above-styled claim to determine the claimant's entitlement to workers' compensation benefits.

On September 27, 2005, a pre-hearing conference was conducted in this claim, from which a Pre-hearing Order of the same date was filed. The Pre-hearing Order reflects stipulations entered by the parties, the issues to be addressed during the course of the hearing, and the parties' contentions relative to the issues. The Pre-hearing Order is herein designated a part of the record as Commission Exhibit #1.

The testimony of Larry Greer, the claimant, Vanessa Greer, and Billy Cox, coupled with medical reports and other documents comprise the record in this claim.

## DISCUSSION

Larry Greer, the claimant, with a date of birth of June 29, 1947, has a seventh grade education. Claimant commenced his employment with respondent in November 1984, as a crane operator and operator of heavy equipment in general construction.

Regarding the basis for the present claim, the testimony of the claimant reflects that he was operating a tractor within the course and scope of his employment when he passed out on May 25, 2005, as a result of heat exhaustion. Claimant's testimony reflects that the Monday prior to Wednesday, May 25, 2005, he was operating a different piece of equipment, an excavator, a couple of hours and that it was "quite hot". Claimant elaborated:

Okay. It was an old excavator. It had no windows, no fan, no ventilation. The exhaust fumes, the heat, the stress - I'm a victim of COPD. I have emphysema. In situations - certain situations - I can perform my duties. But in stressful situations, as this one was, with somebody hounding you every five minutes, telling you to hurry up, let's do it, then it got to the point that I had, basically, a heat stroke. I asked for fans to go on this piece of equipment. I was denied. I asked to be placed on another piece of equipment so I could get some air, and was denied again. Later on in the afternoon, Mr. Cox come along and said we're gonna work another hour, and I was to the point at that time that I could not catch my breath even. I declined, but him being the superintendent on the job, he basically said that you can either do it or you can go to the house. I'm 58 years old. It's kind of hard to start over. So, I put up with it. I tried to stay the other hour and did so. (T. 8).

Claimant testified that by the end of his shift he was not feeling well:

I was clammy to the point of my skin had - I'd done completely quit sweating and so they - the next day, they proceeded to put me on this farm tractor, which was air-conditioned. (T. 9).

Claimant added that he went home, took a shower and went to bed without eating any supper.

Claimant testified that the next morning he felt drained. Claimant reported for work at his usual

time and was assigned to duties driving the air-conditioned tractor. Claimant testified:

I drove the tractor for eight hours and it had been air-conditioned and I had to wear a coat. I opened the doors and everything, but I was freezing to death that day all day long. At noontime, I took a break. We were all sitting eating, and Mr. Cox admitted to one of the employees sitting there with him - he said Larry got too hot yesterday - you can tell from the way he looks. Anyway, they put me back on the tractor that afternoon and I'm not real sure, but I hit a pick-up that afternoon - a State employee's vehicle. But anyway, I went home that night after completing nine hours, and basically the same thing - no supper, to bed, and up the next morning and tried to go again. And the next day is when I blacked out after about 15 or 20 minutes, and from that point, I was in ICU and don't remember nothing until the next day. (T. 10).

Claimant's testimony reflects that from the day he worked on the excavator and got too hot until the point in time that he passed out, the only measure he took to address his complaints was the use of his Nebulizer machine, which assist his breathing. Claimant testified that he spent two (2) days in ICU and one day in recovery at the hospital in Paragould. Thereafter, pursuant to the recommendation of his family doctor, claimant testified that he was sent to the VA hospital in Memphis where he underwent an initial three days of testing. Claimant testified:

And I was there for three more days and when I came home, I was doing fairly decent and I thought I could go back to work and I returned to the job. Mr. Cox told me that I was terminated. (T. 11).

Claimant testified that he has not been physically capable of working since his employment with respondents was terminated. Claimant estimated that he has unpaid medical bills totaling \$11,000.00, relative to his injury in the employment of respondents.

Claimant denied that he had previously experienced a similar incident to that suffered in May 2005:

Not to the point of blacking out. To the point of being disoriented, yes. But, like I said, it wasn't a secret - my health. I'd been with this

company for going on 20 some odd years, and in certain situations back previous to the getting hot on Monday, the week prior to that, I had worked all week and Mr. Cox here can tell you that when he came in on that Monday, I had performed a job that he said that, basically, you know, I got an atta boy out of that. . .(T. 13).

Regarding his previous occasion of disorientation, claimant testified:

The last occasion that I had was probably a year-and-a-half prior to that, working on a job in Kennett, Missouri. At the same time, I was under a stressful situation. I had a brother dying of cancer - who did die, and about that same time frame, I was, you know, concerned about him, losing my job, my health, everything just kind of stacks up on you and it all come down at one time, and, like I said, there was numerous time that Billy Cox, sitting out here right now - I think a lot of him, but he's a driver and he's a pusher. He's a - I guess I shouldn't say there's no respect for human life other than the company's, you know. It's all about the dollar. (T. 13-14).

The testimony of the claimant reflects that his exposure to the extreme heat occurred two (2) days prior to him passing out on May 25, 2005. Claimant noted that by the time he passed out he could not physically hold up any longer:

In fact, when they got me to the hospital, my respirator failure, they called it, my - I was down to 42, and you're supposed to maintain at least a 90. They had a paramedic on this job that I was working on, but he wasn't even notified or - they just took me straight home, which they said that's what I told them to do - take me home, but, there again, I really wasn't in a position to make a statement or a decision where I needed to go. They put an undue burden on my wife, when I got home. They said I, you know, they just put me in the house. She had to cope with me and get the papers to carry me out of the house and put me in the car and take me to the hospital, but, like I said, it's all about the dollar. That's all it is. That's the reason I'm here. I'm here for the dollar to pay my hospital bills. (T. 14-15).

The testimony of the claimant reflects that he remains under the active medical treatment of a physician at the VA hospital.

The claimant testified that during his employment by respondents, he also operated heavy

equipment for himself. Claimant explained that he had an excavator that he worked around his farm with. Claimant noted that he no longer operated his excavator on his farm.

Claimant acknowledged that he past medical problems have been pretty significant. In 2000, claimant had bypass surgery. Claimant testified that at the time of his bypass surgery he was also diagnosed with emphysema. Claimant uses an inhaler and has a Nebulizer at home and in his car. Claimant noted that he is suppose to be treating with the afore four (4) times a day. Claimant acknowledges that he still smokes “sometimes”, although he has been counseled for years to stop.

Claimant testified on cross-examination that the week prior to his incident during the week of May 25, 2005, he had been running machinery and working even more than his regular hours. Claimant’s testimony reflects that during the afore, he did not have any problem breathing or performing his job. Claimant noted that he was by himself on that job and that there was no stress or strain, or anybody there t aggravate him.

Claimant estimates that the temperature during the week of his incident, Monday, Tuesday and Wednesday, was probably in the mid-80's. Claimant added, however:

But, you factor in the heat from that piece of machinery that I was running, which had no windows, not even a hood on the machine, the exhaust fumes, and down there in the river bottoms, no air ventilation, no air circulation. (T. 18).

Claimant acknowledged that he was aware of the importance of reporting injuries to supervisory personnel. Claimant asserts that his supervisor and co-workers were aware of his prior medical history. Claimant acknowledged that the afore would periodically ask him if he was having problems.

The testimony of the claimant reflects that he was off work for a period of approximately five (5) months prior to March 2005, at his request due to seasonal cut-back/layoff during the winter months. Claimant estimated that he worked twenty-one (21) days in 2005 prior to the incident heat exhaustion.

Claimant testified that in 2000 he was diagnosed with obstructive pulmonary disease. Claimant noted that he had just been diagnosed with the afore at the time he had his by-pass surgery. Claimant started the Nebulizer treatments at the time for the COPD and received medical treatment at the VA hospital in Memphis. In addition to the Nebulizer claimant testified that he also takes a breathing pill, and an aerosol spray, Albuterol. Claimant was taking the medication in May 2005.

With respect to the events of May 2005, which serves as the basis for the present claim, claimant testified that he was initially taken by his wife to the doctor's office, and thereafter to the emergency room in Paragould. In addressing the history contained in the records of the emergency room of complaints of chest pain off and on for two weeks, claimant testified that he had been having stress for two weeks which created the chest pains. Claimant noted that he usually took a Nitro for his chest pain and kept on going.

On cross-examination, claimant testified regarding his termination by Mr. Cox:

. . . It was probably a week after the incident and the hospital. I was over there like on a Thursday or a Friday and he told me at that point in time that they couldn't insure me no more. (T. 24).

Claimant denied that he had difficulty breathing on the date of the hearing, noting that he had taken a Nebulizer about thirty minutes before he left home for the hearing and, "they'll go up to four hours, sometimes", unless he gets real stressed. Claimant acknowledged taking deep

breaths, where were audible, while testifying, which he described as his normal breathing since his open heart surgery.

Mrs. Vanessa Greer, the claimant's wife of thirty-six years, testified regarding the event of May 25, 2005, when the claimant was brought home by co-workers. Mrs. Greer described the claimant's condition when he returned home from work on Monday, May 23, 2005:

Exhausted. Just drained, you know. That's pretty well the way he is. (T. 26).

Likewise, the testimony of Mrs. Greer is corroborative of that of the claimant regarding the succeeding days leading up to May 25, 2005. Regarding the events of May 25, 2005, Mrs. Greer testified:

Right. Billy Cox and another guy brought him home and he was just totally out of it, you know, and he kept telling me to take him to the doctor, which, like I said, I can tell. He just didn't make any sense to me, you know. But, I did take him because I knew the doctor was supposed to be at the office, but he had already gone over to the hospital, but Bill had told me he thought he acted like he had a stroke. I don't know. I've not been around anybody that does that, you know, that acted the way he acted that day. (T. 27).

While Mrs. Greer testified that she was not aware of the claimant having previously suffered an episode similar to that of May 25, 2005, there were a number of things that claimant had not told her, to include when he takes Nitro.

Billy Wayne Cox, a general superintendent for respondent, testified that respondent-employer build bridges and roads for overpasses and highways. Mr. Cox's testimony reflects that he has known the claimant for twenty (20) years or more during his employment with respondents. In describing his job responsibilities for respondent-employer, Mr. Cox testified:

Well, I kind of help out on other jobs if I can. A lot of other

supers respect me and I try to help them, you know, if they need help and I'm just kind of over all of them, but basically, I spend my time on one job. (T. 29).

Mr. Cox testified that the week prior to May 25, 2005, claimant was running the track hoe cutting some dirt out of a slope area. Mr. Cox added:

No. Larry just - Larry - I told him to get on the track hoe. As far as cutting grade and making it look right, you know, Larry's always been good at it.

That's the reason I put him in an area like that, you know. (T. 30).

Mr. Cox testified that the claimant did not have any physical problems performing that work.

Mr. Cox's testimony reflects that he was aware of the claimant's heart surgery and that he knew that claimant had trouble breathing. Mr. Cox was also aware that the claimant used a "little breath inhaler". (T. 31).

Mr. Cox testified that the Monday of the week of May 25, 2005, the temperature was probably in the upper 80's and the humidity was high. Mr. Cox added:

But other than the temperatures - upper 80's, but if you know what humidity is, temperature can be lower and humidity's higher, and it's, you know, feels like it's a hundred. (T. 31).

The testimony of Mr. Cox reflects that claimant's regular job duties entailed operating heavy machinery.

Mr. Cox testified regarding his observation of the claimant on the Monday, May 23, 2005, preceding the Wednesday May 25, 2005, incident:

When I went down at 3:30, which I went by there occasionally. I didn't stay right there with them cause Larry was loading trucks and I didn't have to mess with Larry. You know, he's been loading trucks so long you just didn't check on him that often, you know. I went out at 3:30 and asked them if they'd work another hour. Larry told me he was

hot. As far as the statement he made while ago that, you know, he would either work another hour or go home, I did not make that statement. I think too much of Larry. I just don't do Larry that way.

If he would have told me, Bill, I need to go home, I'm hot - Larry knows me better than that, and I know he said I'm a pusher, and I do push jobs. I push them hard, but Larry's been with us 20 years and Larry wouldn't have stayed with me that long - if you know Larry - if I'd treated him like that. I had more respect for Larry than that. (T. 32-33).

With respect to accommodating the claimant on the job site due to his medical history, Mr. Cox testified:

Well, he never - Larry wasn't no quitter. I mean, he - yeah, if Larry would just say, Bill, I'm hot, I need to, you know, go, you know, Larry knows me better than that, and I've let him went. (T. 33).

Mr. Cox testified that the claimant did come into work on Tuesday, May 24, 2005. Mr. Cox reported that physically, claimant relayed that he was tired. Mr. Cox further observed that the claimant did not have a whole lot to say. While the claimant did not say that he was having trouble breathing, Mr. Cox testified that the claimant had trouble breathing prior to the events of May 2005. Claimant worked in an air-conditioned tractor all eight hours on Tuesday, May 24, 2005.

Regarding his observations of the claimant on Wednesday, May 25, 2005, Mr. Cox's testimony reflects:

Yes, I talked to Larry that morning just for a minute. He stood outside of the truck and we talked there for a second, and Larry was going to go ahead and run the tractor that day, and I greased his - I had a air-grease cylinder on the back of the truck, and I greased his sheep foot piece and he took off and made just one round. He went down and another guy that works for me - he was working in the box, and seen Larry kind of go off towards the ditch and out towards the highway and then he made a loop and come back down towards me, and that's when run of kind of down in a ravine there and run into that boy's truck - David

Tutton told me he was pushing it backwards, and I went running up there, hollering and screaming, you know, and Larry finally come to and got stopped. And, at that point, Larry didn't know where he was at. What's wrong, Larry? He didn't know, really, he didn't even know he was down in a ditch. It took him a little while to get oriented, you know. But Larry got out of the truck, you know, got out of the tractor, you know. We talked for a second, and he was going home. Larry got in his truck and he drove just a - he didn't get off the job site. I caught Larry before he got to the bridge there and I said, Larry, let us take you home. So, I took Larry home and another boy followed us in, I think, Larry's truck. (T.34-35).

Mr. Cox is uncertain if he offered to take the claimant to the doctor. He remembers the claimant saying he wanted to go home, and he took him home. Mr. Cox denies dumping the claimant on his wife:

No, sir, not like he said. I mean, like I say, I think too much of Larry, again. I even told her, you know, Larry needs to go to the doctor and, yeah, I'd probably be the one that should have automatically took him right up there, but I didn't do Larry the way he kind of made it sound, you know, but we did take him home and I took, you know, Larry home, you know, a year or so before that, you know, when he went through that other deal with his brother. (T. 35-36).

Mr. Cox testified that he was present when the claimant previously became disoriented during the time his brother was sick. Mr. Cox's testimony reflects, regarding the claimant's physical appearance on the morning of May 25, 2005:

About like he did the other day - the day before, you know - drained, never had a whole lot to say. Larry's always kind of went on a quite a bit and, you know, talked a lot and them few days, he didn't. (T. 36).

Mr. Cox testified that he was aware that the claimant had received medical treatment in Memphis for his breathing problems prior to May 2005. Mr. Cox noted that the claimant did not do a lot of talking about his health problems. Mr. Cox added that after claimant underwent heart surgery when he returned to work he fell right in there like he had previously, and did not have to

be eased back into work.

Following the events which transpired on May 25, 2005, Mr. Cox testified that the claimant did return to the job site:

Larry came back out there - while ago when he said terminated and I told you I didn't terminate him - in a round about way, I guess I did. I told Larry I was concerned about his health and I was scared to basically put him back out there, and I didn't do it that hard way, like, you know, you're fired, I don't need you no more. I told Larry that you don't - in my opinion, we need to - he needed to try to get on some type of disability or something and told him we'd try to help him to get on it, you know. He has a health problem and I had nothing to do with what happened that Monday, you know. I ain't no doctor.(T. 37-38).

Mr. Cox denies that blackballed the claimant to prevent him from finding other work, or gave a bad recommendation to any prospective employer.

Regarding the equipment that the claimant was operating on Monday, May 23, 2005, Mr. Cox's testimony reflects:

It was a - I think it was a 985 - it might have been that big track hoe - anyway, it's a track hoe - a big track hoe.

I don't think it's got a hood on it, and the hood actually covers the motor compartment on the back side of the cab. (T. 40).

Mr. Cox testified that the following day a fan was placed on the equipment that the claimant operated on Monday, May 23, 2005, because the claimant had made the statement that he was hot. A different employee was assigned the equipment on Tuesday, May 24, 2005, when the fan was placed on it. Mr. Cox's testimony further reflect regarding the equipment that the claimant operated on Monday, May 23, 2005:

And the circulation is bad in this cab. I'll agree with you.(T. 42).

Mr. Cox testified that he should have had a fan in the cab of the equipment at the time that the

claimant was operating it.

The medical in the record reflects that claimant was seen at the emergency room of Arkansas Methodist Hospital in Paragould at 8:45 a.m on May 25, 2005. The emergency room report reflects that the claimant gave a history of chest pain off and on for two week. The diagnosis of the attending emergency room physician of the claimant's complaint was that of acute exacerbation of COPD. (RX. #1, p. 5-7).

The History & Physical report relative to the claimant admission to Arkansas Methodist Hospital noted the claimant's chief complaint as "Can't Breathe". The report further reflects, in pertinent part:

**PRESENT ILLNESS:** This man was working with a construction company. The day prior to his admission, he became very hot and had to sit down. He felt like he could not go any further, but continued to work for one more hour. Then he did go home. The following morning he went back to work and apparently passed out while driving some type of construction machinery or at least did not know what he was doing and bumped into another machinery. He was brought to the Emergency Room in respiratory failure, confused, lethargic, and breathing very shallow.

\* \* \*

This is a very lethargic white male who is breathing very shallow and has tachypnea and tachycardia.

\* \* \*

1. Respiratory Failure
2. Chronic Obstructive Pulmonary Disease, Acute Exacerbation
3. ASHD
  - a. Coronary Artery Bypass Grafting
  - b. Past History of Congestive Heart Failure
  - c. Past History of Angina (RX. #1, p. 9-10)

The medical in the record reflects that the claimant was given specific recommendations by his

treating physician, Dr. L.L. Shedd, at the time of his May 28, 2005, discharge from Arkansas Methodist Hospital. Claimant was directed to stay out of the heat and to avoid doing anything that would exhaust him. Claimant's medical regiment was outlined in the recommendations, as well as directions to follow-up at the VA hospital. (RX. #1, p. 16).

After a thorough consideration of all of the evidence in this record, to include the testimony of the witnesses, review of the medical reports and other documentary evidence, and application of the appropriate statutory provisions and case law, I make the following:

### **FINDINGS**

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. At all times pertinent to this claim, the relationship of employee-employer-carrier existed among the parties.
3. On or about May 25, 2005, the claimant earned wages sufficient to entitle him to weekly compensation benefits of \$466.00/\$350.00, for temporary total/permanent partial disability.
4. On May 23, 2005, the claimant sustained an injury arising out of and in the course of his employment, specifically heat prostration/exhaustion resulting in respiratory failure and aggravation of his pre-existing COPD, requiring medical treatment. The work-related heat prostration/exhaustion was the major cause of the claimant's injury and need for medical treatment, and was an unusual and unpredicted incident within the meaning of Ark. Code Ann. §11-9-114.
5. The claimant was temporarily totally disabled for the period beginning May 25, 2005, and continuing through the end of his healing period.

6. The respondent shall pay all reasonable hospital and medical expenses arising out of the injury of May 23, 2005.

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

### CONCLUSIONS

Claimant asserts that as a result of discharging employment duties on a poorly ventilated piece of heavy equipment in extremely hot temperature he suffered from heat exhaustion which required medical treatment and rendered him totally incapacitated from engaging in gainful employment. Claimant seeks corresponding temporary total and medical benefits as a result of the afore. Respondents take the position that the claimant's complaint of lung and/or heat prostration injuries are pre-existing conditions for which they are not responsible. Further, respondents assert that the claimant's complaints do not meet the specific workers' compensation definitions regarding heart, lung and pulmonary injuries in order to be compensable.

The present claim is one governed by the provisions of Act 796 of 1993, in that the claimant asserts entitlement to workers' compensation benefits as a result of an injury having been sustained subsequent to the effective date of the afore provisions. The controlling provisions relative to the injury asserted by the claimant are lodged under Ark. Code. Ann. §11-9-114, which provides as follows:

(a) A cardiovascular, coronary pulmonary, respiratory, or cerebrovascular accident or myocardial infarction causing injury, illness, or death is a compensable 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 usual and unpredicted incident occurred which is found to have been the major cause of the physical harm.

In *City of Blytheville v. McCormick*, 56 Ark. App. 149, 939 S.W.2d 855 (1997), the court interpreted "accident" under §114 (a) as "an event 'caused by a specific incident and identifiable by time and place of occurrence.'" 154.

In the instant claim, it is not disputed that the respondents were aware of the claimant's prior health history. Claimant had been employed by respondents since 1984. According, at the time claimant was diagnosed with COPD in 2000, angina, and underwent coronary bypass surgery he was an employee of respondents. Claimant returned to the employment of respondents after recovering from the afore procedure.

The evidence in the record reflects that on Monday, May 23, 2005, claimant was operating an excavator, which has been credibly described as an older machine equipped with a cab that had no windows, fan or ventilation. The evidence further reflects that the heat from the exhaust fumes added to the 80 degrees climate temperature and humidity to produce the claimant's accidental injury. Claimant reported to his supervisor on the afternoon of Monday, May 23, 2005, that he had gotten hot. The supervisor observed the change in the claimant's demeanor the following day, Tuesday, May 24, 2005. While the claimant discharged his employment duties from a different piece of equipment on May 24, 2005, nevertheless the evidence preponderates he continued to display residuals of the heat exhaustion he suffered the previous day. Residuals of the claimant's heat exhaustion culminated in the May 25, 2005, disorientation, vehicular accident, emergency medical treatment and incapacitation.

While the claimant's regular job duties entailed operating heavy equipment, the evidence

preponderated that the claimant's working conditions of May 23, 2005, were extraordinary and unusual in comparison to his usual regular employment. It is noteworthy that the equipment that the claimant was operating on May 23, 2005, was subsequently equipped with a fan. Further, the supervisor acknowledged that the fan should have been in place at the time claimant operated it on May 23, 2005.

Claimant only discharged employment duties for approximately 15-20 minutes on May 25, 2005, before suffering a vehicular accident due to disorientation. Claimant was transported home per his request by his supervisor, who acknowledged he should have taken him to the hospital instead. The medical records relative to the May 25, 2005, emergency room visit reflects a history of the claimant's injury/heat exhaustion at work, as well as objective finding consistent with same.

Ark. Code Ann. §11-9-508(a) requires that employers provide such medical services as may be reasonably necessary in connection with the employee's injury. Whether a medical procedure or device is a question of fact. *Air Compressor Equipment v. Sword*, 69 Ark. App. 162, 11 S.W.3d 1 (2000). In the instant claim, the claimant was seen at the emergency room of Arkansas Methodist Medical Center in Paragould at 8:45 a.m. on May 25, 2005, after having been transported to same by his wife. Claimant received emergency medical treatment and was later admitted. Claimant remained in the hospital from May 25, 2005, through May 28, 2005. Claimant was directed to follow-up with VA hospital on Tuesday, May 31, 2005, and if not possible, to return to the clinic of his treating physician, Dr. Shedd. At the time of his discharge on May 28, 2005, claimant's condition had improved.

The evidence preponderates that the medical treatment rendered to the claimant on and

after May 25, 2005, was reasonable, necessary, and causally related to his compensable heat exhaustion of May 23, 2005, resulting in respiratory failure, and for which respondents are liable. Respondents have controverted the claimant's entitlement to workers' compensation as a result of the his compensable heat exhaustion of May 23, 2005.

Claimant has not been released to return to work relative to his heat exhaustion/respiratory failure, and continued under the active medical treatment of his family physician and the physicians at the VA Hospital in Memphis. While the claimant present at the job site of respondents approximately a week following his May 28, 2005, discharge from Arkansas Methodist Medical Center, the credible evidence reflects that he was not physically capable of performing employment duties. There is no evidence in the record to reflect that the claimant has been released by his treating physicians to return to his regular employment duties.

Entitlement to temporary total disability benefits for an unscheduled injury is contingent upon a showing that the claimant is completely incapacitated from earning wages and remains within his healing period. *Arkansas State Highway Department v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981). Ark. Code Ann. §11-9-102 (13) defines the healing period as the period for healing of an injury resulting from an accident. The healing period ends when the employee is as far restored as the permanent character of the injury will permit.

It is undisputed that the claimant suffered from respiratory complaints and had been diagnosed with COPD prior to his compensable injury of May 23, 2005. A pre-existing disease or infirmity does not disqualify a claim if the employment aggravated, accelerated, or combined with the disease or infirmity to produce the disability for which compensation is sought. *St. Vincent Medical Center v. Brown*, 53 Ark. App. 30, 917 S.W.2d 550 (1996). In workers'

compensation law, the employer takes the employee as he finds him, and employment circumstances that aggravate pre-existing condition are compensable. *Nashville Livestock Commission v. Cox*, 302 Ark. 69, 787 S.W.2d 64 (1990). The aggravation of a pre-existing, non-compensable condition by a compensable injury is itself compensable. *Hublely v. Best Western-Governor's Inn*, 52 Ark. App. 226, 916 S.W.2d 143 (1996). More importantly, the aggravation of a pre-existing condition by a specific work-related incident need not be the major cause of a claimant's disability in order to be compensable. *Farmland Insurance Co. v. Dubois*, 54 Ark. App. 141, 923 S.W.2d 883 (1996).

The evidence preponderates that the claimant was rendered totally incapacitated from engaging in gainful employment on May 25, 2005, as a result of his compensable heat exhaustion/respiratory failure of May 23, 2005, continued to require active medical treatment, and has not been released to return to work. Respondents have controverted the claimant's entitlement to workers' compensation benefits growing out of his compensable injury of May 23, 2005.

#### **AWARD**

The respondents are herein ordered and directed to pay to the claimant temporary total disability benefits at the weekly compensation benefit rate of \$466.00, for the period commencing May 25, 2005, and continuing until such time as he reaches the end of his healing period or is released to return to work, a date to be determined, as a result of the compensable injury of May 23, 2005. Said sums accrued shall be paid in lump without discount.

The respondents are further ordered and directed to pay all reasonable, necessary and related medical, hospital, nursing, and other apparatus expenses, to include medical related

travel, growing out of the claimant's compensable injury of May 23, 2005.

This award shall bear interest at the legal rate pursuant to Ark. Code Ann. §11-9-809, until paid.

Matters not addressed herein are expressly reserved.

**IT IS SO ORDERED.**

---

**Andrew L. Blood, Administrative Law Judge**