

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F513628

MICHAEL MINER	CLAIMANT
BASIC BLOCK GROUP	RESPONDENT
COMPANION PROPERTY & CASUALTY INSURANCE CARRIER	RESPONDENT

OPINION FILED AUGUST 7, 2006

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

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

Respondents represented by JOSEPH PURVIS, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on June 20, 2006, 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 February 10, 2006. 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 October 28, 2005, the relationship of employee-employer-carrier existed between the parties.

3. The claimant experienced a stroke while at work on October 28, 2005.

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

1. Compensability of the claimant's stroke on October 28, 2006.
2. Related medical.
3. Temporary total disability from October 29, 2005, to a date to be determined.
4. Attorney's fees.

In regard to the foregoing issues the claimant contends that he was injured on October 28, 2005. Claimant had a stroke while walking at work after a hard day of handling loads.

In regard to the foregoing issues the respondents contend that the claimant's incident did not amount to a compensable incident under the Arkansas Workers' Compensation Act.

The documentary evidence presented in this matter consists of the Commission's pre-hearing order marked Commission's Exhibit No. 1. The claimant submitted medical information marked Claimant's Exhibit No. 1 and the definition of subclavian steal syndrome marked Claimant's Exhibit No. 2. The respondents submitted medical information marked Respondents' Exhibit No. 1 and the deposition of the claimant marked Respondents' Exhibit No. 2. All these exhibits were admitted without objection.

DISCUSSION

The claimant testified that he was forty four years old and went to work for the respondent in late July 2005 as a boom truck driver. The claimant explained that a boom truck is basically a shortened version of an eighteen wheeler that has a crane on the back with a hoist attached and a cage for lifting materials on and

off. The claimant testified that the type of materials he would be lifting on and off of the truck would include cinder blocks, sacks of concrete and retaining wall material. The claimant testified that besides his duties as a driver he also would help in the yard sort out and stack materials. The claimant testified that he was on the job approximately ten to twelve hours a day and a lot of this time was spent in transit with the truck. The claimant testified that the time he spent actually operating the boom truck and the crane itself would be from one to three hours a day depending on the job. The claimant testified that only twenty to thirty minutes a day was spent working in the yard helping others with the loading and unloading. The claimant testified that he operated the crane one handed using his left hand. The claimant testified that if he was working with materials on pallets he would try to shift the crane level or the hoist lever into the pallets and jockey them back and forth depending on how tight the pallets were. The claimant testified that he would use his right arm to do this task. The claimant testified that when using his right hand he was pushing and pulling just trying to get the forks underneath the pallets. The claimant testified that once he got the crane moving around into position if the load started spinning on the end of the cable he would have to grab the cable and stop it using both hands. The claimant testified that he would steady the load and then move it into position. The claimant testified that the truck he drove was a standard and he used his right arm to shift gears.

The claimant testified that before he began driving for the respondent he had to pass a DOT physical. The claimant testified that he took his DOT physical before he began working for a former employer, Great Plains Coca-Cola. The claimant testified that when he took his DOT physical there was a question about his diabetes so he had to come back three months later to be rechecked. The claimant testified that he changed his diet and passed the test. The claimant testified that he had not had any problems before with his heart or blood pressure. The claimant testified that he did not have a family doctor. The claimant stated that he usually gets the flu about once a year no matter what he does and that he has been to the VA to get antibiotics if needed.

The claimant testified that on October 28, 2005, his day started light. The claimant testified that he visited with some of the other drivers and got his truck prepped. The claimant testified that about daylight they all headed off to their separate job deliveries and he had managed to get his directions messed up so he did not get to the job site until about 8:30. The claimant testified that he got set up as close as he could to the house where they wanted the material and he had to fight with it for a little while because he was in some real loose material in the driveway and had to stack some chunks of concrete so he could stabilize his truck. The claimant testified that once he got his truck set so that it would not sag, he began unloading. The claimant testified that he was using the boom with the cage on it to unload materials for a retaining wall which was loaded on

pallets. The claimant testified that he was working and his arm started burning and he thought he had pulled a muscle so he went ahead and finished unloading. The claimant testified that he got up into the truck and took an aspirin. The claimant explained that he did not have anymore room to unload the rest of his material so he got out and visited with the man in charge as to where he wanted the remainder of the load placed. The claimant testified that they were walking across the back yard when all of a sudden he could not see, got dizzy and went to his knees. The claimant testified that the man with him asked if anything like this had ever happened before and he told him no that he had no idea what was going on. The claimant testified that his eyes got back to where he could see again and he went over by a retaining wall and stood there for a few minutes and tried to figure out what was going on. The claimant testified that the man with him said that he broke out into a cold sweat. The claimant testified that he went back to his truck and that the man went inside. The claimant testified that the temperature outside was approximately thirty degrees at this time. The claimant testified that he kept getting weaker so he put the equipment back up into the truck and moved the crane to the bed of the truck to make sure it was not swinging and got in the truck and just kept getting weaker by the second. The claimant testified that he dialed his supervisor and told him he was in trouble and from there on everything basically was just bits and pieces. The claimant testified that he remembered the EMT arriving and he remembers being air vacted to the hospital in Bentonville.

The claimant testified that he was taken to the hospital on Friday morning and everything was a blur pretty much to him through Saturday. The claimant testified that he was moved to a room on Saturday evening. The claimant testified that on Sunday after he was visited by a lady doctor who told him that he had a caffeine overdose and a vasovagal mental block in his head, he checked himself out of the hospital. The claimant testified that he could not get to the VA the next day but he did drive himself to the VA on Tuesday morning and was seen by Dr. Aye Koko. The claimant testified that after Dr. Koko examined him he diagnosed him with having had a stroke and admitted him to the hospital. The claimant testified that when he was released on Wednesday he was assigned a primary care physician, Dr. Rhames. The claimant testified that he is still being treated at the VA and has an appointment for July 20, 2006. The claimant testified that besides being treated at the VA he was also sent to a diabetic clinic in Fayetteville to be treated for diabetes and also was sent to a specialist in Little Rock to do a sound scan of his right arm.

The claimant testified that he has not worked since October 28, 2005. The claimant testified that Dr. Koko or Dr. Rhames gave him a letter releasing him to work at light duty with restrictions and when he took it back to the respondent they told him that they did not have light duty available. The claimant testified that he is not able to work. The claimant testified that he has no circulation in his right arm and if he tries to do very much with his right arm it starts burning and gets numb. The claimant

testified that he also has problems with his balance and stumbles around quite a bit. The claimant testified that he is doing physical therapy at home as instructed by the VA and that he is taking blood pressure medication. The claimant testified that he also takes an antidepressant, an aspirin, uses an inhaler as well as medication for his diabetes. The claimant testified that he was not on any medications prior to October 28, 2005.

On cross examination, the claimant testified that on October 28, 2005, when he arrived at the job site he was by himself. The claimant testified that there was a job supervisor and once he was instructed as to where to put the load of materials the supervisor went back inside. The claimant agreed that he operated the crane using a remote control device which he operated with his left hand because he was left-handed. The claimant agreed that he would use his dominant hand to swing the crane around and then fit the tongs or prongs underneath the slots in the pallets and then move them around and lower them until they hit the ground. The claimant further agreed that these activities were a part of his everyday job. The claimant agreed that October 28 was a fairly cool day about thirty degrees outside and he had driven his truck and unloaded his materials on a level area. The claimant testified that October 28 was a light day for the whole crew, noting that they only had one load a piece to deliver and that they were basically taking it easy until they got back to the shop. The claimant testified that he started getting light headed when he was walking across the yard with the job supervisor. The claimant

agreed that the activities he did that day were things he would do all the time on his job. The claimant testified that at the hospital the doctor told him he had experienced a caffeine overdose. The claimant testified that all he had had was a diet Mountain Dew that morning and then he had only consumed it down to the top of the label on the bottle. The claimant testified that when he got to the VA Dr. Koko was able to diagnose him after two physical tests and just by looking at him with having had a stroke. The claimant testified that Dr. Koko was the doctor he saw in urgent care and he was the doctor who ordered the various tests. The claimant testified that he did not have a family history of vascular disease but that his grandfather did have heart problems. The claimant testified that he does have a family history of diabetes. The claimant testified that on October 28, 2005, he was smoking approximately two packs of cigarettes a day. The claimant agreed that while at the VA he was also diagnosed with hypertension and it was discovered that he had high blood pressure. The claimant was asked what about his job in his opinion caused his stroke and the claimant responded, "Pushing and maneuvering is the only thing that I had." The claimant agreed that this was a normal and usual physical activity associated with his job and that there was nothing that he did that day that was unusual or unduly stressful from a physical standpoint. The claimant stated, "I did my regular job."

On redirect examination, the claimant testified that he operated the remote control with his left hand and held onto one of

the bars on the boom with his right hand. The claimant testified that all of this was done standing outside beside the truck, noting that nothing can be done from inside the cab of the truck.

On recross examination, the claimant was asked if he had to maneuver the remote control as a part of his everyday work and the activities he had just previously described were they part of his regular duties and the claimant responded, "Yes, Sir." The claimant, when being asked about unloading the pallets, stated that he had to use force to get it under there sometimes, noting that he just had to adjust it. The claimant testified that on the morning of October 28 he had a palletized load. The claimant again agreed that it was a normal, calm, very light and easy day.

The medical records set forth that the claimant was seen at the Northwest Medical Center on October 28, 2005, for complaints of weakness and fatigue with a near syncopal episode. The history sets forth that the claimant's symptoms started while he was working on flat ground, noting that his head went light and he went down to his knees. The history sets forth that the claimant returned to his truck and rested his head on the steering wheel feeling sweaty and clammy. The claimant reports that he went to the bathroom and returned to his truck. The claimant described himself as feeling rather weak and having an episode of vomiting but denies any accompanying stressful situation, any loss of consciousness and denies any change in p.o. intake. After examination and review of the claimant's laboratory results, the claimant was diagnosed with near syncope, weakness and lymphopenia.

Dr. Christopher Simpson, on October 28, 2005, writes that the claimant underwent a CT scan of his head which showed no acute obvious stroke or bleed. After examination and review of the claimant's laboratory data, Dr. Simpson assesses the claimant with having progressive weakness, fatigue, nausea, vomiting and diaphoresis with near syncopal episode, etiology uncertain. Dr. Simpson also assessed the claimant with right arm discomfort and/or paresthesias. The doctor writes that he cannot exclude anginal equivalent, TIA, and possible dysrhythmia. Dr. Simpson ordered a series of tests and prescribed aspirin. Tests run of the claimant's chest which included his heart as well as his head were all negative. The claimant was discharged from the hospital on October 30, 2005.

The claimant began being seen at the Veteran's Administration Hospital by Dr. Aye Koko. A CT scan showed infarct in the cerebellum and the claimant was admitted to the hospital. An arterial doppler verbally reported that there was blockage of the subclavian artery distal to the vertebral artery extending to the brachial artery. The medical records set forth that the claimant was treated extensively while in the Veteran's Hospital and was ultimately diagnosed with having Type II diabetes, hypertension, cerebellar infarct, possible subclavian steal syndrome as well as vascular disease. Dr. Marlan Rhame writes on December 2, 2005, to whom it may concern about the claimant. Dr. Rhame writes that the claimant has never had any history of stroke or problems with his upper extremities to suggest that he had a pre-existing condition

therefore, patient stroke and subsequent finding of right subclavian steal syndrome should be considered as having occurred while on the job.

After a review of this record in its entirety as well as a review of Arkansas law, I find that the claimant has failed to prove by a preponderance of the evidence, in light of Arkansas law, that he sustained a compensable injury while working for the respondent on October 28, 2005. Ark. Code Ann. §11-9-114 sets forth:

(a) A cardiovascular, coronary, pulmonary, respiratory or cerebrovascular accident or myocardio infarction causing injury, illness, or death is a compensable injury only if, in relation to other factors contributing to the physical harm and 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 participate the disability or death was extra ordinary 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.

The parties have stipulated that the claimant experienced a stroke on October 28, 2005, while he was at work. The claimant has testified at the hearing as well as in his deposition that October 28, 2005, was a light work day, that it was a cool day being thirty degrees outside, and that the activities which he performed on the job site were what he normally did and was expected to do to carry out his work activities. The claimant, several times, indicated

that he was not doing anything unusual and he was performing the normal activities associated with his job. The claimant agreed, on cross examination, that there was nothing that he did that day that was unusual or undutifully stressful from a physical standpoint. The claimant testified that he was just doing his regular job. Based on the claimant's testimony as well as the stipulations of the parties as well as Arkansas law, I find that the claimant has not proven that he sustained a compensable injury in accordance with Arkansas law. Therefore, this claim should be denied in its entirety.

FINDINGS & CONCLUSIONS

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.
2. On October 28, 2005, the relationship of employee-employer-carrier existed between the parties.
3. The claimant experienced a stroke while at work on October 28, 2005.
4. The claimant has failed to prove by a preponderance of the evidence, in light of Arkansas law, that he sustained a compensable injury while working for the respondent on October 28, 2005. See discussion above. Also see Ark. Code Ann. §11-9-114(a)(b)(1).

ORDER

The claimant has failed to prove by a preponderance of the evidence, in light of Arkansas law, that he sustained a compensable

injury while working for the respondent on October 28, 2005.
Therefore, this claim should be denied in its entirety.

IT IS SO ORDERED.

ELIZABETH DANIELSON
ADMINISTRATIVE LAW JUDGE