

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F505238

MICHAEL WOOLSEY

CLAIMANT

USA TRUCK, INC.
SELF INSURED

RESPONDENT

OPINION FILED AUGUST 2, 2006

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON in Fort Smith, Sebastian County, Arkansas.

Claimant represented by FLOYD THOMAS, Attorney, EL DORADO, Arkansas.

Respondents represented by RODNEY MILLS, Attorney, Fort Smith, Arkansas.

STATEMENT OF THE CASE

A hearing was held on May 18, 2006, in Fort Smith, 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 23, 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 May 19, 2005 and all other pertinent dates, the relationship of employee-employer-carrier existed between the parties.

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

1. Compensability of the claimant's deep venous thrombosis.
2. Related medical.

3. Temporary total disability from May 20, 2005, to July 29, 2005.

4. The appropriate compensation rate for the claimant.

5. Attorney's fees.

In regard to the foregoing issues the claimant contends that his deep venous thrombosis, which necessitated his hospitalization on May 19, 2005, was an injury that arose out of and in the course of his employment as an over the road truck driver, and that he is entitled to payment of medicals as well as temporary total disability benefits while hospitalized on May 19, 2005, in Indianapolis, Indiana.

In regard to the foregoing issues the respondent contends that the claimant was not performing employment services, and was not acting in the course and scope of his employment for the respondent, at the time of the alleged injury giving rise to this claim and, therefore, his claim is not compensable. No compensable event is the major cause of the condition for which the claimant currently seeks benefits and/or medical treatment. The medical treatment and expenses sought by the claimant are not reasonable and necessary as a result of a compensable event. The claimant's current condition is the result of an independent intervening cause and/or a preexisting condition for which this respondent has no liability.

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

1. The respondent submitted medical documentation marked

Respondent's Exhibit No. 1 and payroll records marked Respondent's Exhibit No. 2. All these exhibits were admitted without objection.

DISCUSSION

The claimant testified that in May 2005 he was employed and working as an over the road truck driver cross country for the respondent. The claimant testified that he was paid by the respondent based on the numbers of miles he drove, noting that he was paid twenty-six cents a mile and that he usually would run 10,000 miles a month or about 2,500 a week.

The claimant testified that about three weeks before May 20, 2005, he thought that he had pulled a muscle in his right calve attributing it to the seat in his truck. The claimant testified that he adjusted the seat and went up and down with the seat but kept on driving thinking that he had pulled a muscle. The claimant testified that when he got home to El Dorado, Arkansas, and got out of his truck his mother told him he looked as white as a ghost and he went to the hospital where it was reported that his fever was running a 104. The claimant testified that at the hospital he was diagnosed with pleurisy or pneumonia and was given some medication. The claimant testified that he went back out on the road to North Carolina to pick up a load and was coming through Indianapolis. The claimant testified that night he could not walk on his foot, noting that he could not put any pressure on his foot. The claimant testified that he called his dad and reported that he did not think he had a pulled muscle but definitely something was wrong. The claimant testified that he was at a truck stop in

Indianapolis where he was to deliver a load the next morning at 7:30 in Hammond, Indiana. The claimant testified that that night he called an ambulance to be picked up and when he got to the hospital he was diagnosed with having a blood clot in his right leg. The claimant testified that after he was diagnosed he called his dispatcher and told them he could not make his delivery because he had a blood clot and the hospital was holding him for observation. The claimant agreed that he was in the hospital from May 20 through May 28, 2005, during which time they were trying to get his blood thin enough so that he could go home. The claimant testified that his mom and dad came and picked him up and drove him back to El Dorado on May 28, 2005.

The claimant testified that in El Dorado he was instructed by his Indianapolis physicians to find a doctor to look after him and make sure that his blood stayed thin. The claimant testified that he is being seen by Dr. Parker and that so far everything is looking good. The claimant testified that he does have scar tissue in his artery and that it bothers him all the time. He claimant testified that his right leg is bigger than his left now and he is in constant pain. The claimant testified that from the time he was in the hospital in El Dorado which was around May 5 until May 20 the pain and discomfort in his leg just continually got worse to the point where he could not walk. The claimant testified that he has continued to treat with Dr. Parker and although currently he is not taking any medications he still exercises as recommended by the doctor as well as is regularly checked by Dr. Parker.

The claimant agreed that sometime in June 2005 his employment relationship with the respondent ended. The claimant testified that he did not file for unemployment but began immediately seeking a job elsewhere. The claimant testified that for almost seven months he has been working for Union County, Arkansas, as a truck driver. The claimant testified that currently he is earning \$9.25 per hour. The claimant testified that during his employment with Union County he has not missed a day nor has he been late to work one time. The claimant testified that he is a high school graduate with two years of college.

On cross examination, the claimant agreed that he began working for the respondent on February 9, 2005. The claimant agreed that when he began working for the respondent he trained for approximately six weeks before he received his own truck. The claimant testified that after he got his own truck he was out for approximately three weeks and that he began feeling bad at which time he asked his dispatcher to route him through El Dorado. The claimant testified that this was the period of time that he was in the hospital for pleurisy. The claimant testified that after he was back from the emergency room for his pleurisy, he was preparing to go back out on the road. The claimant testified that he was washing cloths and when he leaned over to get the cloths out of the dryer he blacked out. The claimant agreed that in his deposition he stated that his right side went numb and he blacked out. The claimant testified that when he was at the emergency room in El Dorado he reported that he had been having chest pains for about

four days and that his right arm was numb. The claimant testified that he did not mention anything about his right calf hurting because he thought that it was a pulled muscle. The claimant testified that he did not return to work for the respondent until Monday, May 16, 2005, when his doctor released him. The claimant agreed that during the ten-day period of time that he was home in El Dorado he was trying to get better from his pleurisy. The claimant testified that he was probably doing his chores around the house and just trying to feel better until his doctor would release him to return to work. The claimant testified that while he was at home during this ten-day period, he did not do any strenuous activities nor does he recall having any type of injury or accident. The claimant testified that when he was released to return to work he was dispatched to North Carolina and then was to go to Indianapolis. The claimant agreed he arrived in Indianapolis on May 19. The claimant agreed that it was on the 19th that he had to call an ambulance to take him to the hospital. The claimant testified that when he got to the ER, he could not walk on his foot and that the doctor cut his jeans off of him, laid him on a bed and reported that he had a blood clot. The claimant testified that he does not recall if he told the doctors that he had been off work for the previous ten days. The claimant testified that he did call his dispatcher so that someone could come pick up his load that he was to deliver the next morning. The claimant testified that for the period of time he worked for the respondent, he did not sustain any sort of injury to his right leg. The claimant again testified

that it was some three weeks before May 20 that he began to notice pain in his leg thinking that it was a pulled muscle. The claimant testified that his leg was getting real tight and he thought that maybe the seat was messed up so he adjusted the seat all different ways. The claimant testified that he still could not get comfortable in his seat. The claimant testified that before he would start a trip he would do a pre trip inspection of his truck and at the end of the day he would do another inspection. The claimant agreed that he periodically would stop to deliver loads or pick up loads and that he would also be out of the truck to get fuel, eat and go to the restroom. The claimant testified that he could stop any time he needed to while he was driving cross country but the main purpose was to get the load delivered timely. The claimant testified that his job responsibilities for the respondent were pretty much the same for any over the road truck driver. The claimant testified that he is not contending that there was anything wrong with the seat in his truck nor is he contending that it was defective in any way. The claimant testified that he believes that his problem was caused by just hanging his leg over the edge of the seat for a long period of time. The claimant testified that when Dr. Parker released him on July 29, 2005, he requested that he come back in one year. The claimant testified that he has not seen any other doctor for any reason related to his workers' compensation claim since he last saw Dr. Parker. The claimant testified that after July 29, 2005, he worked for a friend hauling lumber back and forth to Dallas for a period of about four

days. The claimant testified that he also worked for Mussop which is a water blasting company. The claimant testified that he worked for this company for a couple of weeks until he heard of an opening with the county which he applied for and got.

Carol Webb testified that she is employed by the respondent as the risk management supervisor. Ms. Webb testified that she is familiar with the claimant and has reviewed his wage statements. Ms. Webb identified the claimant's payroll records for the period of time he worked for the respondent. Ms. Webb testified that she calculated the claimant's earning based on the fourteen weeks and day which he worked for the respondent. These records were then admitted into evidence as Respondents' Exhibit No. 2 with no objection from the claimant.

On cross examination, Ms. Webb agreed that at the time the claimant was terminated by the respondent, he was being paid twenty-six cents per mile driven. Ms. Webb testified that while the claimant was a student driver, he was paid fifty dollars a day as a student driver wage but once he began to drive his own truck he was paid by the mile. Ms. Webb agreed that on March 20, 2005, the claimant's contract with the respondent changed to that of twenty-six cents per mile.

On redirect examination, Ms. Webb testified that there actually was not a physical contract between the claimant and the respondent but the twenty-six cents per mile was an offer which was made between the claimant and the respondent.

The medical records set forth that the claimant was seen at the emergency room of the Medical Center of South Arkansas on May 7, 2005, with complaints of sharp chest pains onset three to four days ago. The claimant, after examination, was diagnosed with viral pleurisy and medications were prescribed. The claimant was seen at SAMA Health Care Services on May 11, 2005. The notes indicate that the claimant presented with a complaint of an onset of pain that has been gradual and persistent for one week. The notes indicate that the claimant describes the pain as a moderate to severe sharp pain located in his right chest which does not radiate. Symptoms are reported as aggravated by coughing and deep breathing and associated with cough and fever. After examination, the claimant was assessed with having pneumonia as well as pleurisy and medications were prescribed. There is a note from the SAMA Health Care Services dated May 11, 2005, indicating that the claimant may return to work on May 16, 2005. On May 20, 2005, the claimant was admitted to the Witham Health Services' emergency room with right leg pain for the past two days, noting that the claimant was unable to sleep. The history given by the claimant is that he has been having right leg pain for the past month. The claimant reports increased swelling over the last two to three-day period which has increased to a throbbing pain at rest. The claimant also reports swelling of his lower right extremity. It is noted that the claimant was diagnosed with pneumonia two to three weeks ago as well as symptoms of pleuritic chest pain which resolved spontaneously. After examination, the claimant was diagnosed with

deep venous thrombosis of the right lower extremity. The claimant's ultrasound of his lower extremity showed extensive deep venous thrombosis extending into the femoral vein, posterior tibial and peroneal veins. The claimant was admitted to the hospital for treatment and it was recommended that if he was to continue driving a truck he would more than likely be on a life long treatment of Coumadin. Dr. Tony Boudreau recommended that the claimant arrange follow up treatment with a primary care physician in his home area. A CT of the claimant's chest revealed extensive wide spread pulmonary embolism and the claimant's ultrasound of his lower extremity revealed extensive deep venous thrombosis. The claimant was seen at St. Vincent Hospital on May 20, 2005, by Dr. Thomas Cartwright. Dr. Cartwright viewed the claimant's CT as well as his ultrasound and examined the claimant. After reviewing all of this data, Dr. Cartwright assessed the claimant with having extensive right lower extremity deep venous thrombosis and bilateral pulmonary emboli. Dr. Thomas Molian writes on June 23, 2005, that he saw the claimant while he was in Indianapolis at which time the claimant was diagnosed with deep vein thrombosis and pulmonary embolism. Dr. Molian writes that the claimant's only risk factor that was appreciated was his prolonged sitting in his truck while driving long distances. Dr. Molian writes that the claimant's treatment plan will involve anti-coagulation for six months and that physically he is able to do any type of work he wants once he is off his medication. The doctor recommends that the claimant should not go for long periods of time sitting and recommends that

if he continues to drive a truck he will need to be able to stop, get out and walk around every few hours to maintain good circulation in his legs to prevent a recurrence of his deep venous thrombosis. The claimant was seen by Dr. Wade Parker in El Dorado, Arkansas, on July 1, 2005, as follow up for his deep venous thrombosis. After examination and taking a history, Dr. Parker increased the claimant's Coumadin, ordered his records from Indianapolis and scheduled a return appointment. The claimant again was seen for follow up on July 29, 2005, and October 5, 2005, by Dr. Parker.

The claimant's pay records were submitted as Respondents' Exhibit No. 2. Arkansas law sets forth that the compensation rate for a claimant should be figured on the contract of hire at the time of injury. The claimant testified as well as the respondents that at the time of this claimant's alleged injury he was being paid twenty-six cents per mile. The claimant's pay records indicate that he was working under this agreement for a period of seven weeks having earned a total of \$4,245.30. This would entitle the claimant to a compensation rate of \$404.00 per week for temporary total disability and \$303.00 for permanent partial disability.

Ark. Code Ann. §11-9-102 sets forth that;

(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 extraordinary and unusual in comparison to the employees usual work in the course of the employee's regular employment or, alternatively, that some unusual or unpredicted incident occurred which is found to have been the major cause of the physical harm.

After a review of this entire matter, I find that the claimant has failed to prove by a preponderance of the evidence, in light of Arkansas law, that his deep venous thrombosis is a compensable injury. The claimant testified that he is a truck driver and that it is his opinion as well as that expressed by one of his treating physicians that sitting in the truck seat with his legs down operating the truck is the cause of his deep venous thrombosis. The claimant has not testified about anything unusual or different about his truck driving experience for the respondent nor has there been any showing of some unusual or unpredicted incident which occurred to have caused this claimant's deep venous thrombosis. Sitting in the truck driver's seat is not an unusual event for a truck driver rather it would be expected that to be a long haul truck driver one would have to sit in the driver's seat to operate the vehicle. The claimant has not testified to any extra ordinary or unusual exertion associated with his work for the respondent for which he can attribute his pulmonary problems. Therefore, this claim should be denied in its entirety.

FINDINGS & CONCLUSIONS

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

2. On May 19, 2005 and all other pertinent dates, the relationship of employee-employer-carrier existed between the parties.

3. The claimant has failed to prove, in light of Arkansas law, that he sustained a compensable injury while working for the respondent in May 2005. See Ark. Code Ann. §11-9-114(a)(b)(1). Also see discussion above.

ORDER

The claimant has failed to prove, in light of Arkansas law, that he sustained a compensable injury of deep venous thrombosis while working for the respondent in May 2005. Therefore, this claim should be denied in its entirety.

IT IS SO ORDERED.

ELIZABETH DANIELSON
ADMINISTRATIVE LAW JUDGE