

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F609140

DENVER L. GULLEY, EMPLOYEE	CLAIMANT
CITY OF MOUNTAIN HOME, EMPLOYER	RESPONDENT
ARKANSAS MUNICIPAL LEAGUE, WORKERS' COMPENSATION TRUST, CARRIER	RESPONDENT

OPINION FILED May 11, 2007

Hearing held before ADMINISTRATIVE LAW JUDGE CHANDRA HICKS, in Harrison, Boone County, Arkansas.

Claimant was represented by the HONORABLE Gary Davis, Attorney at Law, Little Rock, Arkansas.

Respondent was represented by the HONORABLE Chris Bradley, Attorney at Law, North Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above-styled claim on March 1, 2007, in Harrison, Arkansas. A Prehearing Order was entered in this case January 3, 2007. This Prehearing Order set forth the stipulations offered by the parties and the issues to be litigated, as well as their contentions.

The following stipulations were submitted by the parties and are hereby accepted:

1. The employee-employer-carrier relationship existed on August 10, 2006.
2. The claimant is entitled to a compensation rate of \$403.00 in the event the claim is found to be compensable.

By agreement of the parties, the issues to be litigated

were limited to the following:

1. Compensability.
2. Medical expenses.
3. Temporary total disability compensation.
4. Controversion and an attorney's fees.

All other issues are reserved.

With respect to the foregoing issues, the claimant contends he suffered a heat stroke on August 10, 2006 while working. He seeks payment of medical expenses, temporary total disability benefits from August 11, 2006 to a date yet to be determined, and attorney's fees.

The respondent contends there are no objective medical findings to substantiate a compensable injury as required by Ark. Code Ann. §11-9-102.

The documentary evidence submitted in this case consists of the Commission's Prehearing Order, which has been marked as Commission's Exhibit No. 1. The claimant's Prehearing Questionnaire was marked as Claimant's Exhibit No. 1, Documentary Medical Evidence was marked as Claimant's Exhibit No. 2. The respondent's Prehearing Questionnaire was marked as Respondent's Exhibit No. 1. The claimant's oral deposition was entered as Respondent's Exhibit No. 2.

The claimant objected to work-related documentation and documentation relating to alleged work-place discrimination being

introduced into evidence. The claimant's objection was sustained, therefore, these documents have been proffered.

The following witnesses testified at the hearing: Sharlot Gulley, the claimant, Robert Thiel, John Beebe, and Johnny Dewey.

DISCUSSION

During the hearing, the claimant's wife, Sharlot Gulley, gave testimony. She denied the claimant had prior problems with slurred speech and dizziness prior to the incident of August 10, 2006. According to Mrs. Gulley, the heat index on the day of the work incident was 109 degrees in Batesville. She testified that after being treated at the emergency room, once the claimant arrived home, his problems with slurred speech after several days was not as pronounced or noticeable, and that the balance problem has gotten better although he still is not 100 percent.

She testified a couple of days after the incident, the claimant had continued problems with slurred speech, which caused him to seek treatment from his family doctor, Dr. Burton.

Mrs. Gulley essentially testified that the claimant has problems processing information, remembering things, and he suffers from headaches. She testified the claimant is totally different since his work incident.

According to Mrs. Gulley, when the claimant's work incident took place, he had been performing his job duties two and-a-half days, and before that, he had been working as the assistant supervisor at the Water Treatment Plant, which was pretty much

indoors. She testified that it would have been unusual circumstance for the claimant to be out in the heat for an extended period of time.

On cross examination, Mrs. Gulley admitted that John Dewey and Robert Thiel were there when she arrived at the emergency room on the day of the incident. Mrs. Gulley did not recall what station she was listening to when she heard the reading for the temperature. She essentially admitted the respondent paid for one of her husband's visit with Dr. Spanos and the EEG study, which was normal. She also admitted the results of the MRI were normal. According to Mrs. Gulley, prior to the incident, her husband was taking a very low dose of Paxil for depression, which he had been taking at least since January of 2006.

She admitted the claimant had to work out in the heat when he worked at the Water Treatment Plant. Mrs. Gulley further admitted in July of 2006, the claimant had to work building or finishing off a storage shed that was not air conditioned.

The claimant also gave testimony during the hearing. The claimant, age 47 (7/28/59) is a high school graduate, and is licensed as a waste water operator. He has prior work experience of approximately 20 years in Mountain View with 15 of those years being at the water plant, as the remainder of the time he worked for the city on water lines and other things. According to the claimant, he petitioned to be moved to Mountain Home and went to work for the Water Treatment facility, in 2003. According to the claimant, he worked continuously for the respondent until this

circumstance in August of 2006. The claimant testified he was terminated from employment with the respondent some time in 2007.

As to the August 10, 2006 incident, the claimant testified he was working on the Vac-Con truck, from which he used a big hose (which is somewhat similar to a vacuum with a jet rodder pressure on it) to unstop sewer lines. The claimant testified he had been assigned to this type of work a couple of days. Prior to this, the claimant testified he worked as an assistant supervisor at the Water Treatment Plant. The claimant testified when he worked this job, he generally did not have to get out in the heat unless he wanted to, as he had been an assistant supervisor pretty much since 2003.

The claimant testified the job where he had to be out in the heat consistently, he had worked only a couple of days. According to the claimant, on the day of the incident, he was working out on the street, on the pavement where the manhole cover would be in a subdivision. The claimant testified it was hot and he started to have some problems, as he felt weak and got a really bad headache. According to the claimant, he was working with John Beebe, as they started around 8:00 a.m. that morning. He testified when they went to the warehouse for lunch, he was feeling "pretty wore down," but he did not tell Mr. Beebe or anybody at that time he was having problems. However, after his lunch break, although the claimant was feeling worse, he was able to resume his duties and did not have to get down in the manhole. The claimant testified:

A. I never got all the way down in no manhole.

Q. You just put the hose down into it, is that right?

A. Yeah. I had to - - one time I couldn't get it out, the hose. It was stuck.

Q. So how did you get it unstuck?

A. Well, I couldn't shake it loose.

Q. Was this after lunch?

A. Yeah.

Q. Okay. So how did you get it loose?

A. I just lowered myself down in there about that deep.

Q. About to your chest?

A. With my arms and kicked it - - I kicked the hose and with that angle it - - pulled it out of the line in the bottom and then I lifted myself out and pulled the hose out.

Q. So you were able to get it loose like that?

A. Yeah. I didn't go all the way down in there. It didn't - - it didn't have no steps.

Q. Okay. So then how were you feeling?

A. I wasn't feeling very good.

Q. Were you staying there at the job site or leaving?

A. Well, we finished that manhole. That's when we were finished with it.

According to the claimant, he thinks that they next went and got water. He denies telling Mr. Beebe how he was feeling because he did not want to complain. According to the claimant, at this point, he had quit sweating, as he was soaked from sweating. The claimant testified they went back to the warehouse

and that is when he told Mr. Beebe he could not do any more. According to the claimant, he walked around the warehouse and got "sicker and sicker," as he went to the bathroom and tried to throw up. The claimant testified he was taken to the emergency room by Robert (Thiel), treated and released home a few hours later.

Since this time, the claimant testified he has been under medical care and has not been released to return to work. The claimant admitted to undergoing a neuropsychological evaluation, and to recently taking another one in December. According to the claimant he is supposed to take another one later on.

Prior to being assigned to the vac-truck, the claimant testified he was not required to go out in the heat very often. The claimant testified he currently has problems with headaches, numbness in his hands, his eyes bother him, and he has occasional numbness in the left cheek. According to the claimant, his eyes bother him in direct bright sunlight, and are now dry.

On cross examination, the claimant denied he was having problems with depression before the events of August 10, 2006, but admitted to taking Paxil before August 10, 2006. According to the claimant, he was taking this medication for other reasons. He also admitted to being previously treated for hypertension. The claimant admitted that in his job as assistant supervisor for the Water Treatment Plant, they would pretty much watch TV, cook, eat, and do whatever they wanted to do. He admitted that while working on the shed in July of 2006, it did not have air

conditioning. Specifically, the claimant testified:

Q. You had to work out in the heat in July of 2006, didn't you?

A. I worked a few days on there on and off for an hour or two a day.

Q. Staying in there an hour at a time, or two hours, is that what you are telling us now?

A. No. I said a day.

Q. So one or two hours a day but - - is that what you are saying?

A. I worked down there one or two hours a day.

Q. Every day, right? Every work day?

A. No.

Q. So how often would you be out there working in that shed?

A. I don't - - I don't really know how long at a time we would be there.

The claimant admitted that on August 10, 2006, he would work on a manhole and then get back into the air conditioned truck and travel to the next manhole. He also admitted to having a bottle of water, which he was able to drink. According to the claimant, on the day of the incident, he had to get down into two manholes. The claimant admitted to breathing in fumes, but was unsure as to whether it was of such a nature so as to require him to wear protective gear. The claimant subsequently testified that the fumes did not require protective gear.

Robert Thiel, testified on behalf of the respondent. According to Mr. Thiel, he is employed by the city of Mountain Home as the sewer foreman, as he is in charge of all the sewer

maintenance and some new construction. He testified he keeps special gas monitoring equipment in his truck (it monitors dangerous gases in manholes), which is used if a worker needs it while in working on a manhole.

Mr. Thiel admitted to transporting the claimant to the hospital on the day of the incident. He testified that while being transported, the claimant did not make any complaints or statement about his condition, nor did he vomit, collapse into unconsciousness or have muscle twitching or shaking.

On cross examination, Mr. Thiel admitted it was very hot on the day of the incident.

Mr. John Edward Beebe testified on behalf of the respondent. He is employed by the city of Mountain Home/the respondent, as a Vac-Con operator (combination vacuum-jet rodder), which is used primarily for tank and pipe cleaning. He also admitted the heat index ranged between 95 and a 100 on the day of the incident. Mr. Beebe admitted he observed the claimant drinking water on the day of the incident, and he also testified the claimant refilled his water bottle while on break. He also noted that the truck was air-conditioned, and in full use on the day of the incident.

Mr. Beebe testified the claimant did not get into a manhole. According to Mr. Beebe, the previous employee who worked with him did not get into a manhole during the three-year-period they worked together. He also testified it would be highly unusual for an assistant to get in a manhole. Mr. Beebe denied having laughed at the claimant as he climbed out of a manhole. He

further denied having noticed any changes in the claimant's skin such as redness and blotchiness.

He testified:

Q. You told us that Mr. Gulley had at least two liters of water. I believe one was before break and one was after break.

Did he have any water - - another liter of water after lunch?

A. Yes. He did.

Q. Would that be the extent of it or did he have yet more?

A. No. He had one in the morning, early morning. And then he had one after break. And then when we went back to work he drank another one.

Q. Did the two of you stop some place where Coca-Cola, or 7-up, or some drink like that could be purchased?

A. I believe we went to College Station.

Q. Did Mr. Gulley buy a drink like that?

A. He bought water.

On cross-examination, Mr. Beebe admitted he did not pay close attention to the claimant's skin.

Johnny Dewey gave testimony on behalf of the respondent. He works for the respondent as assistant director, as he assists the director with any problems pertaining to the waste water, Water Treatment plant or the distribution out in the field. According to Mr. Dewey, there were times when working at the Water Treatment the claimant would have to get outside in the elements to do his job. He testified the claimant would have to help do maintenance, repair, watch the flow rates and chemical feeds to

the plant, climb water tanks to replace lights, do inspections on tanks, crawl down in a pit to do inspections and maintenance, and mow.

On cross-examination, Mr. Dewey admitted the job on the Vac-Con truck is completely different than the job the claimant had before, but pretty much required the same amount of outside work.

The claimant first sought emergency room treatment for possible heat exhaustion on August 10, 2006 at Baxter Regional Medical Center under the administration of Dr. Philip Sadler. Physical examination, review of systems, and diagnostic studies revealed the following:

CHIEF COMPLAINT: Possible heat exhaustion.

HPI: This is a 47-year-old white male, who was working out in the heat, states that he began feeling weak, getting nauseous, apparently stopped sweating. He vomited and started having a severe headache. Denies other complaints.

REVIEW OF SYSTEMS: Negative, except as below:

CONSTITUTIONAL: No fevers, chills.

CARDIOPULMONARY: No chest pain, shortness of breath.

NEUROLOGICAL: No dizziness.

PAST MEDICAL, SURGICAL, SOCIAL, MEDICATIONS, AND ALLERGIES: Per nurse's notes reviewed.

FAMILY HISTORY: Negative.

PHYSICAL EXAMINATION:

VITAL SIGNS: Per nurse's notes reviewed.

GENERAL: Well-developed, well-nourished, white male in no apparent distress.

NEURO: Alert and oriented x3. Cranial nerves 2 through 12 grossly intact. Good strength and range of motion and equal bilaterally.

PSYCH: Normal affect.

SKIN: Pink and dry.

HEENT: Normocephalic, atraumatic. Pupils equal, round, reactive to light and accommodation. Extracular

movements intact. Nasal passage clear. Oropharynx clear.
NECK: Supple without lymphadenopathy.
CV: Regular rate and rhythm without murmurs, gallops, or rubs.
LUNGS: Clear to auscultation bilaterally.
ABDOMEN: Soft, nontender, non distended. Positive bowel sounds. No palpable masses.
EXTREMITIES: Without clubbing, cyanosis, or edema.

DIAGNOSTIC STUDIES: Chest x-ray NAD. EKG reveals a normal sinus rhythm, no ST elevation or depression. CBC is normal. CMP is normal. Cardiac markers are normal. Coags normal.

Therefore, the claimant was treated and released with instructions to take frequent breaks during hot days and drink plenty of fluids.

The claimant was seen by Dr. Burnett on August 11, 2006 due to symptoms which included, tingling on the left side of his face and left arm, and jittery/shaky feeling. His assessment was heat exhaustion, for which he recommended fluid replacement and that the claimant stay out of the sun. He also instructed the claimant to stay of work until August 15, 2006.

On August 14, 2006, the claimant was seen at the emergency room of Baxter Medical Center due to left-sided face numbness, left arm numbness, left arm pain, weakness and dizziness. The following was reported:

CT head is negative. Chest x-ray is negative. EKG reveals normal sinus rhythm, no ST elevation; there may be very slight ST depression in II, III and a VF with inverted T-waves in lead III only. CBC is normal. CMP is normal. Cardiac markers are normal. Coags are normal.

ASSESSMENT:

1. Left arm and face numbness.
2. Left arm pain.

3. Weakness.

PLAN: Discussed patient with Dr. Shelley Warr, who is on for Dr. Bruton. She requests that since this is or is not clearly related to heat-related illness, she would prefer that he be admitted through his primary care doctor, and if it is found that it is heat related, this can be worked out later. Discussed patient with Dr. Bruton, who agrees with admitting him to the hospital, rule him out with cardiac enzymes. He assumes care on arrival to the floor.

On August 17, 2006, Dr. Bruton reported, in pertinent part:

His MRI of the head was normal. I am not sure whether this is malingering or represents a true neurologic deficit. He did certainly have reason to believe that he had some heat stress. I am going to send him to a neurologist to help me figure this out.

He also took the claimant off work due to illness.

On August 25, 2006, the claimant saw Dr. Bruton due to follow-up of unstable gait, balance, and coordination, for which he ordered nerve conduction test in order to determine if there was any nerve slowing. He also restricted the claimant from working until he could see Dr. Spanos, a neurologist.

On September 5, 2006, the claimant was seen by Dr. Demetrius Spanos due to lingering problems with his balance and headaches. Dr. Spanos noted that the claimant had a past medical history significant for nephrolithiasis, hypertension, and mild depression, for which he had been on Paxil 10 mg per day prior to the event. He specifically reported, in pertinent part:

The patient was working on a sewer with a coworker, working with a hydraulic hose, when he indicated that he entered the manhole to dislodge the hose. He was in there for several minutes (less than fifteen) and stated that there were foul odors present. He also indicated that although there should be testing for fumes and gases none was being done at the time. Upon

exiting the manhole he felt "woozy,, disoriented, and stumbly." He was taken to his warehouse by his coworker and his symptoms worsened. He developed nausea and vomiting and indicates that approximately an hour later he was taken to the emergency room. While in the emergency room he was evaluated by Dr. Sadler and diagnosed with "heat exhaustion. At the time a chest x-ray was within normal limits. The patient's sodium and potassium levels were normal and his BUN and creatinine were normal as well. Liver function tests and the remainder of the CMP was normal including myoglobin. His WBC count was normal. HgbA1C was normal; hemoglobin and hematocrit were 16.1/47.3 respectively. He did have an elevated MCV of 97.9. EKG was within sinus rhythm. Although his wife stated that his blood pressure was high at the time of presentation (176/127) on review of the records his pressure was 127/109. He complained of headache, nausea, vomiting, and dysarthria. The dysarthria lasted for five days according to the patient and his wife. The headaches have persisted and involve the left periorbital area. He denied any headaches prior to the 10th of August. These are present on a daily basis and are described as sharp. Along with them the patient experiences left face numbness and left upper extremity numbness. For the first ten days the patient had "imbalance" with gait and still "veers to the left" when driving, according to his wife.

On a daily basis the patient complaints of left eye symptoms. He indicates that his left eye "is lazy" and seems to deviate laterally. However, he denies any diplopia. He also complains of memory decline which was not present prior to the incident. He cannot remember phone calls, has trouble carrying on a conversation, and has word finding difficulties. His wife indicates that she drives with him and although he does not become lost when driving it is apparent to her that driving "is pretty stressful" because the patient has to expend energy concentrating on what he is doing.

Following the emergency room visit on 8/10/06 the patient continued to experience symptoms as above. He was admitted on 8/15/06 by Dr. Bruton for "heat exhaustion, having some ongoing neurologic changes." An MRI of the brain without contrast was negative. Again the patient's CMP was normal. His myoglobin was slightly elevated at 110. An initial CT scan of the brain without contrast was negative and chest x-ray

showed chronic changes without acute pathology. His EKG remained in normal sinus rhythm. During his second visit to the emergency room on the 14th of August the patient's blood pressure remained elevated with a range of 129/90 to as high as 150/106.

Dr. Spanos's impression was "headache and memory problems."

Therefore, he recommended the claimant undergo an EEG, neuropsychological evaluation and consider MRI of the brain with contrast. Dr. Spanos reported, in part:

Discussion: The patient has been evaluated through his primary care physician and emergency room on several occasions. Based on his chemistry there is no evidence of dehydration at the time of presentation to the emergency room. He did have elevated blood pressure but this is nonspecific as to cause, especially since he has a history of hypertension. Notes from his primary care physician indicate the possibility of secondary gain. Also, following his initial evaluation I received a notice from his caseworker indicating that the patient's employer stated the patient was not in a manhole as he indicated but rather working with a hydraulic hose. Also, "the eight foot area has no fumes or gases." Finally, that the patient worked in this area for two days prior to the incident. Whether or not he entered the manhole will be easy to discern by simply checking with his coworker.

It is certainly possible that because the patient was de-conditioned to work out of doors in the hot environment he may have suffered heat exhaustion but persistent symptoms as he indicates would be unusual. I have recommended that an EEG be done to functionally investigate his cerebral function and I would strongly recommend that a neuropsychological evaluation be done not only because he complains of memory decline but also because of its accuracy for malingering/somatoform disorder. If these studies prove to be abnormal I would repeat the MRI of the brain and this time have it done with gadolinium.

I did inform the patient that it would be most unusual that someone who has ophthalmoplegia as he describes involving the left eye not experience diplopia. According to the patient and his wife they clearly indicate that his left eye deviates laterally every morning since this event. Today on examination there

are no objective findings of abnormality involving the nervous system. He had mild give-away weakness of the left upper extremity at the deltoid but I do not feel that this was due to true weakness.

The claimant underwent an EEG study on September 6, 2006, with the following impression and conclusion:

IMPRESSION: Normal awake and drowsy EEG recording.

CONCLUSION:

1. There is no evidence of epileptiform activity to indicate seizure disorder.
2. There is no evidence of asymmetry to indicate a focal lesion or area of cerebral damage.
3. No evidence of generalized slowing to indicate an encephalopathic process.

On October 18, 2006, the claimant underwent a neuropsych consult with Dr. Dan Johnson. His impression and discussion included the following:

Current neurocognitive testing found three areas of concern and was able to address to some extent two potential rule outs. The patient demonstrated a consistent pattern of notably less proficient performance on verbally mediated cognitive tasks - typically associated with more left hemisphere vs. visually mediated non-verbal cognitive tasks - typically associated with more right hemisphere functioning. While he may have always had some aptitude towards visual, hand-on type tasks, the discrepancy currently seen appears to represent a significant change from estimated premorbid levels. In addition, the patient's attention/concentration was variable and inconsistent, with significantly morbid estimates. The patient readily passed objective measures of malingering/effort. In addition, he readily passed emotional/behavioral indices which would of picked up negative response bias, positive response bias, defensiveness, etc. While he does have high mild to low moderate depression, he does not present as a somatoform or conversion disordered individual. From a neuropsych perspective there appears to be some left

frontal dysfunction present.

On October 30, 2006, the claimant returned for a follow-up visit with Dr. Spanos. His impression was, "headache and memory decline." Dr. Spanos wrote:

Discussion: The patient underwent an EEG to evaluate for any seizure activity or delays in function. There was no evidence of epileptiform discharges, asymmetry, or generalized slowing consistent with encephalopathy. An MRI of the brain also was done. The patient next proceeded to a neuropsychological evaluation. This appeared to be a valid study without evidence of malingering. Also of note is that there was no evidence of somatoform or conversion disorder. The study showed that the patient demonstrated abnormality of processing information and its relation to his memory dysfunction. I believe that this is due to excessive heat exposure as described in the initial consultation." A follow-up study has been scheduled in December (two months after the initial one) and this will help tell us if a good prognosis can be expected. Possible treatment options would include Cymbalta, Effexor, and memory exercises.

Dr. Spanos saw the claimant due to chief complaint of "headache" on December 20, 2006. He noted that the claimant had some improvement with about 50% improvement to his headaches since beginning Topamax. He also reported that a repeat neuropsychological evaluation showed some improvement to his cognition but continued presence of delays. The claimant denied any new symptoms of diplopia, visual loss, dysarthria, aphasia, dysphagia, focal weakness, focal numbness, incoordination, loss of consciousness or seizure like activity. His impression was "memory decline and headache," for which he recommended Topamax, increase Cymbalta, and Lorcet. He also instructed the claimant to return to the clinic in August.

On December 27, 2006, Dr. Spanos wrote, "Denver Gulley was seen in our clinic December 20, 2006. Please excuse from work for the following dates: January 3, 2007 thru April 16, 2007."

The claimant's deposition was taken on December 7, 2006. On the day of the incident, the claimant admitted to reporting to work at 8:00 a.m. He further admitted the truck was air conditioned and to having access to water. According to the claimant, since the incident, he has experienced severe headaches. The claimant also gave testimony concerning the treatment he has received for his work incident of August 10, 2006.

The instant claimant contends that he became overheated while working on August 10, 2006, which resulted in him having sustained a work-related injury in the form of a heat stroke/heat exhaustion. The claimant has the burden of proving by a preponderance of the evidence that the claim is compensable, i.e., 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. Carman v. Haworth, Inc., 74 Ark. App. 55, 455 S.W.3d 408 (2001). For the claimant to show compensability here, he must show under Ark. Code Ann. § 11-9-114 that the exertion associated with this accident was extraordinary and unusual compared to the employee's usual work or some unusual and unpredicted incident occurred that was the major cause of the physical harm. Mountain Home Manufacturing v. Hafer, 66 Ark. App. 127, 991 S.W.2d 127 (1999); Ulibarri v. Jim Wood Company, 79

Ark. App. 354, 87 S.W.2d 846 (2002).

Ark. Code Ann. § 11-9-114 provides as follows:

(a) A cardiovascular, coronary pulmonary, respiratory, or cerebrovascular accident or myocardial infarction causing injury, illness, or death is a compensable injury only if, in relation to other factors contributing to the physical harm, an accident is the major cause of the physical harm.

(b) (1) An injury or disease included in subsection (a) of this section shall not be deemed to be a compensable injury unless it is shown that the exertion of the work necessary to precipitate the disability or death was extraordinary 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 court has interpreted "accident" under §114(a) as "an event caused by a specific incident and identifiable by time and place of occurrence.'" City of Blytheville v. McCormick, 56 Ark. App. 149, 154, 939 S.W.2d 855 (1997) citing Ark. Code Ann. § 11-9-102(5) (A) (i) (Repl. 1996).

In addition, the claimant must establish a compensable injury by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4) (D). "Objective findings" are those findings which cannot come under the voluntary control of the patient. Ark. Code Ann. § 11-9-102(16) (A) (i). The claimant's burden of proof shall be a preponderance of the evidence. Ark. Code Ann. § 11-9-102(4) (E) (i).

The central issue in this case is whether the claimant established a compensable injury in the form of a heat stroke/heat exhaustion by objective medical findings. In the

present matter, I find that the only findings contained in the record which suggests that the claimant sustained a heat stroke/heat exhaustion injury which has resulted in the problems that he has experienced (memory loss, problems processing information, headaches, etc.) is found in the results of the neurocognitive testing administered by Dr. Dan Johnson on October 18, 2006, wherein he found from "a neuropsych perspective there appears to be some left frontal dysfunction present." In Wentz v. Service Master, 75 Ark. App. 296, 57 S.W.3d 753 (2001), the Arkansas Court of Appeals noted that in other courts, neuropsychological testing standing alone is not sufficient evidence of a brain injury; there must be some other objective evidence of such an injury. See also Sloopfors v. Haverstick-Borthwick Co., 44 Pa. D. & C. 4th 1 (2000). In Wentz, the appellant sustained a brain injury as a result of a work-related accident. However, the Court of Appeals found that, in addition to the neuropsychological testing, there was other objective evidence of a brain injury. See Wentz, supra. This evidence included medical testimony besides that of the neuropsychologist that attributed the appellant's injury to her work-related accident. The only evidence suggesting that the claimant sustained a compensable heat stroke/heat exhaustion injury was found in the results of the neuropsychological testing; there was no other objective evidence establishing a injury. The results of the neuropsychological testing standing alone is not enough to establish a compensable injury. Watson v.

Tayco, Inc., 79 Ark. App. 250, 86 S.W. 3d (2002). While I recognize the claimant did have an elevated blood pressure, Dr. Spanos has opined this is nonspecific as to cause, especially since the claimant has a past medical history significant for hypertension. Based on Dr. Spanos's expert opinion and given the claimant's past medical history of hypertension, I find it would require conjecture and speculation to causally link this alleged condition to the August 10, 2006 incident. Conjecture and speculation cannot supply the place of proof. Dena Construction Co. v. Herndon, 264 Ark. 791, 575 S.W.2d 155 (1979). Therefore, based on the record before me, I find that the claimant failed to prove by a preponderance of the evidence that he sustained a compensable heat stroke/heat exhaustion injury on August 10, 2006, while working for the respondent.

Having found that the claimant failed to prove by a preponderance of the evidence that he suffered a compensable heat stroke/heat exhaustion injury, I further find that the claimant is not entitled to any reasonable and necessary medical treatment for his current heat stroke/heat exhaustion related-problems, nor is he entitled to temporary total disability compensation for this condition.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The employee-employer-carrier relationship existed on August 10, 2006.
2. The claimant is entitled to a compensation rate of \$403.00 in the event the claim is found to be compensable.

3. The claimant failed to prove by objective medical findings that he suffered a heat stroke/heat exhaustion injury on August 10, 2006, while working for the respondent.

ORDER

For the reasons discussed herein, this claim must be, and hereby is, respectfully denied.

IT IS SO ORDERED.

CHANDRA HICKS
Administrative Law Judge