

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F501736

GLENN HINDS	CLAIMANT
J B HUNT TRANSPORTATION	RESPONDENT
AIG CLAIM SERVICES INSURANCE CARRIER	RESPONDENT

OPINION FILED FEBRUARY 22, 2007

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

Claimant represented by BRENT STERLING, Attorney, Fayetteville, Arkansas.

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

STATEMENT OF THE CASE

A hearing was held on December 5, 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 September 27, 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 January 4, 2005, the relationship of employee-employer-carrier existed between the parties.

3. The claimant is entitled to the maximum compensation rate for 2005.

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

1. Compensability of the claimant's deep vein thrombosis in his leg and bilateral pulmonary embolisms.
2. Related medical.
3. Temporary total disability from January 19, 2005, through March 24, 2005.
4. Attorney's fees.

In regard to the foregoing issues the claimant contends that he sustained a compensable injury and/or aggravation of a pre-existing condition when he developed deep venous thrombosis in his leg and bilateral pulmonary embolisms due to immobilization during the course and scope of his employment as a truck driver with the respondent. On January 8, 2005, the claimant was admitted to Wellmont Holston Valley Medical Center in Tennessee for shortness of breath on exertion. The claimant indicated that he had been experiencing shortness of breath with exercise for four days. He was released with restrictions and told to follow up with his doctor at home as soon as possible. The claimant presented to his primary care physician, Dr. Janet Bach, on January 12, 2005, as requested. He indicated that he needed to get back to work as a truck driver. Testing was ordered for atypical chest pain and he was allowed to return to work. He tried driving and traveled 400 miles when he was re-hospitalized in Columbus, Ohio at the Mt. Carmel West Hospital on January 19, 2005. Diagnostic testing revealed deep vein thrombosis of the left lower extremity and presumed pulmonary embolism.

Ultrasounds of the left lower extremity revealed deep vein thrombosis in the femoral vein and he was discharged on January 21st with anticoagulants and told to return to Dr. Bach. On return to his hometown the claimant was admitted on January 23, 2005, to St. Mary's Hospital by Dr. Janet Bach. Discharge diagnosis was acute bilateral pulmonary embolism with respiratory distress; left deep vein thrombosis; and morbid obesity. The claimant was released on January 31, 2005, with anticoagulant therapy with absolute bed rest. Dr. Bach completed an Attending Physician's Certification of Health Condition for J. B. Hunt indicating that the claimant was requesting medical leave as of January 18, 2005. Dr. Bach's report indicated that the deep vein thrombosis was likely related to prolonged sitting. She noted that the claimant would require oxygen and rest at home as well as blood thinners with close monitoring. The claimant remained under the care of Dr. Bach and was closely monitored and diagnostic testing was performed. Dr. Bach's March 24, 2005, clinic note indicated that the pulmonary embolism was due to prolonged immobilization due to truck driving and that he would be okay to return to work with restrictions. He was also terminated by J. B. Hunt. Upon release by Dr. Bach he applied for employment to J. B. Hunt and was rehired and is working for the respondent as an over the road truck driver for J. B. Hunt. Dr. Janet Bach, as the primary care physician, has indicated in her report of June 8, 2005, that the claimant developed deep venous thrombosis in his leg and bilateral pulmonary embolisms which resulted in hospitalization and

treatment as well as inability to work for approximately eight weeks. Dr. Bach indicated further as follows:

while Glen's obesity is a significant risk factor for blood clots, I believe the major cause of his problem (greater than 50% of the cause) was his prolonged immobilization while truck driving.

Dr. Bach recommended that the claimant rest, walk and stretch on a regular basis while driving and he has been doing so since returning to work for the respondent without any symptoms. The claimant contends that he sustained a compensable injury and/or aggravation of a pre-existing condition when he developed deep vein thrombosis in his leg and bilateral pulmonary embolisms due to immobilization while performing his job duties with the respondent and that he is entitled to reasonable related medical care and treatment. The claimant further contends that he is entitled to temporary total disability benefit from January 19, 2005, through March 24, 2005, and to a controverted attorney's fee. All other issues are reserved.

In regard to the foregoing issues the respondent contends that the claimant's deep vein thrombosis and pulmonary embolism are not compensable under the Ark. Code Ann. §11-9-102(4)(A) and, therefore, are not compensable in that those conditions with the claimant were not caused by a specific incident identified by time and place.

The documentary evidence submitted in this matter consists of the Commission's Pre-hearing Order, marked Commission's Exhibit No. 1. The claimant submitted documentary evidence marked Claimant's Exhibit No. 1. The respondent submitted documentary evidence marked

Respondent's Exhibit No. 1, and the deposition of Dr. Janet Bach, marked Respondent's Exhibit No. 2. All of these exhibits were admitted without objection.

DISCUSSION

The claimant testified that before he went to work for the respondent, he went through the DOT physical which included the physical activity of stepping up and down onto a step. The claimant testified that this was a strenuous test but he passed it. The claimant testified that when he went out on the road for the respondent, he would be out on the road for approximately twenty-six (26) days a month but was allowed one day off every seven (7) days. The claimant testified that he drove in compliance with the Department of Transportation Regulation, stating that he regularly ran out of his seventy (70) hours and had to take a recess which is a thirty-four (34) hour break. The claimant testified that during this period of time he would be sitting most of time.

The claimant testified that in January 2005, he began to develop physical problems explaining that when he would get out of his truck and just walk to the back of his truck he would start losing his breath. The claimant testified that initially he thought he might be coming down with pneumonia because he never had any problem with breathing before except when he did have pneumonia. The claimant testified that he would experience these breathing symptoms whenever he did anything strenuous such as opening doors, connecting, disconnecting the truck, anything that required any physical exertion. The claimant testified that these symptoms would

abate if he would sit down for ten (10) to twenty (20) minutes, at which time his breathing would come back to normal. The claimant testified that he checked into the Kingsport, Tennessee Hospital emergency room to be checked for these symptoms. The claimant testified that after examination, he was told that his lungs were clear, there was no fluid in his lungs, and that he was not having a heart attack so he was sent on his way. The claimant testified that the respondent was aware of this E. R. visit and that the hospital faxed information to them stating what he could and could not do. The claimant testified that because he was put on light duty he was not allowed to drive and was instructed by the respondent to not drive his truck even a couple of miles. The claimant testified that he called a taxi and went to a hotel at which time his truck was put into storage. The claimant testified that he stayed in a hotel until Monday and then called his fleet manager, Sandy Coney, and was instructed not to drive again until he was followed up by his own personal physician at which time he went to his home in Michigan. The claimant testified that he was instructed to take the bus but due to his physical condition and not being able to breathe, he rented a car so that he could get home as quickly as possible. The claimant testified that he was seen by Dr. Janet Bach on January 12, 2005. The claimant testified that Dr. Bach gave him an oxygen level test when he was walking and after evaluation, the doctor assessed him with having asthma and gave him an inhaler. The claimant testified that after a week Dr. Bach released him to go back to work. The claimant stated that he rented

a car and went to pick up his truck. The claimant testified that he was sent to his first assignment and learned that there was no pick up to be made so he set there for almost two days waiting for a job assignment. The claimant testified that during these two days when he would get out of his truck to go to the bathroom or to walk any distance, he would get short of breath and would have to stop and catch his breath.

The claimant testified that he was then given a load to pick up in North Carolina and after he picked it up he continued to have trouble with shortness of breath. The claimant testified that in Jackson, Ohio he was feeling so bad, he called the respondent and told them he was going to deliver the load but he needed to bring his truck in because something was very wrong. The claimant testified that while he was off for a week he began to feel better but that once he was back in the truck he again began having problems breathing and he thought perhaps that there was a CO₂ leak in the truck that needed to be checked out. The claimant testified that when he got to the Columbus yard, he was so exhausted that he had to ask another driver to disconnect his truck. The claimant testified that when he took four or five steps he couldn't get his breath and he had to call out to another driver to help him walk because he wasn't sure he could make it inside by himself. The claimant testified that while his truck was being checked out for a CO₂ leak, he checked himself into a hotel and when he woke up in the middle of the night he was violently ill. The claimant testified that he called the room clerk and asked that they call an ambulance

for him as well as come open his door. The claimant testified that he was taken by ambulance to the Mount Carmel Hospital in Columbus, Ohio. The claimant testified that he was too big to go into the machine for a CT scan so they did an ultrasound on his legs and found blood clots and then ultimately found that he had blood clots in his lungs and started him on blood thinners. The claimant testified that he was in the hospital for two to three days and before they would release him from the hospital, he had to learn how to give himself a shot so he could administer to himself a blood thinner. The claimant testified that his breathing was still really bad and that his wife and sister came to pick him up to take him back to his home. The claimant testified that after her returned to his home in Saginaw, Michigan, he was admitted into the hospital after about a day and a half. The claimant testified that Dr. Bach was his attending physician. The claimant testified that he was in the hospital until January 31st, at which time he was released and sent home. The claimant testified that because he could not breathe well enough to go up and down the stairs he had to use a oxygen machine and sleep in a hospital bed in the living room. The claimant testified that he was supposed to use oxygen twenty-four (24) hours per day. The claimant testified that he does not know what day but he was contacted by the respondent and told that since he had only had been a short term employee they no longer could keep him as an employee. The claimant then identified an attending physician statement signed by Dr. Bach indicating that he had been off work from January 19, 2005, for deep vein thrombosis

related to his prolonged sitting. The claimant testified that he was not paid by the respondent to take breaks so prior to this health condition, he did not take regular breaks.

The claimant testified that he continued being treated by Dr. Bach and after a month or a month and a half he got to the point where he was fine without any problems and was off of his oxygen. The claimant agreed that on March 24, 2005, Dr. Bach released him to return to work but with the recommendation that every two hours or so he would stop, get out, and walk around his truck to get his blood flowing. The claimant testified that the respondent rehired him and he began work on April 1, doing the same job he had been doing for them. The claimant testified that upon his return to work, he has tried to follow Dr. Bach's instructions as to keeping his blood flowing and his heart rate up a little bit. The claimant testified that he last saw Dr. Bach on September 5, 2006, at which time he was taken off Coumadin. The claimant testified that prior to these events happening in January 2005, he had never had any health problems such as diabetes, high blood pressure, he doesn't smoke, and he had never had to take medication on a routine basis. The claimant testified that currently he is not on any medication on a daily or routine basis.

On cross examination, the claimant testified that he would not disagree with Dr. Bach if in her deposition she testified that there was really no particular incident that caused the claimant's deep vein thrombosis but, rather, it was his continuous and prolonged sitting. The claimant agreed that when he was first seen on January

8, 2005, in Kingsport, Tennessee, he was initially checked by the doctors for heart and lung problems. The claimant further agreed that after being checked over he was released and encouraged to see his family physician. The claimant also agreed that when he was first seen by Dr. Bach, she checked him out for shortness of breath as well as obesity and sent him back out to work with the diagnosis of cold and asthma. The claimant testified that he had only been working for the respondent about four months when he began to experience symptoms. When asked, the claimant testified that he had worked for another trucking company, Schneider, for approximately one year prior to working for the respondent. The claimant explained that work for Schneider was much different in that the drivers were more active and there was not as much sitting around and down time as there was with the respondent. The claimant was asked to read from a letter opinion from Dr. Bach which set forth that in her opinion the claimant's obesity is a significant risk factor for blood clots and she believes the major cause of his problems was prolonged immobilization while truck driving. The claimant testified that there was no particular incident that caused his problem.

On redirect examination, the claimant testified that when his symptoms first started he would stop whatever he was doing and wait a few minutes to catch his breath so he could go back to his task. The claimant testified that the time came when he was getting out of his truck and he experienced sudden shortness of breath associated with a mild dull ache in the center of his chest which was not

resolved with rest over a period of twenty (20) minutes. The claimant testified that he had been out on the road since a couple of days after Christmas and that by January 4, he was beginning to experience shortness of breath and had reported this to the respondent thinking he was coming down with pneumonia. The claimant testified that at that time he asked to be rerouted to his home so that he could be seen by his family doctor.

Christy Russell, testified that she was a claims specialist for American International Group that handles workers' compensation matters for the respondent. Ms. Russell testified that when she received the claimant's claim, she initiated an investigation and upon visiting with the respondent learned that he had called in to report shortness of breath and had gone to the hospital to be checked out for heart problems in early January. Ms. Russell testified that the claimant did not file a workers' compensation claim until February 2, 2005, indicating that his doctor told him that the blood clots were caused from prolonged sitting in the truck. Ms. Russell testified that she had an interview with the claimant on February 4, 2005, and during this interview the claimant indicated that there was no specific incident that brought on any of his problems. The claimant then told her that his doctor said that his problems were work related due to sitting in the truck.

On cross examination, Ms. Russell was asked to read from a document, N.P. Health as to the factors that put people at risk for developing blood clots. Ms. Russell read as follows:

"Prolonged immobilization such as lung, car or airplane sitting for long periods, four (4)

hours or more, reduces circulation by fifty (50) percent. Diabetes, obesity, childbirth.”

Ms. Russell agreed that the claimant's two contributing factors were immobilization as well as obesity. Ms. Russell agrees that Dr. Bach was of the opinion that it was the immobilization while driving the truck that caused the claimant's blood clots.

The medical records set forth that the claimant was seen in Kingsport, Tennessee, on January 8, 2005, at the medical clinic. The claimant was seen for complaints of being short of breath for the past four days noting that he feels like he did in the past when he had pneumonia. The claimant was discharged that day with instructions to see his family physician as soon as possible. Dr. Michael Bacon writes on January 8, 2005, that the claimant reports trouble breathing on exertion. The doctor writes that the claimant is a significantly obese gentleman estimating that he weighed approximately 350 pounds. After examination, Dr. Bacon writes that with such a negative work up he did not feel that the claimant was having an acute cardiac or pulmonary event and did not feel that he was having a deep vein thrombosis. Dr. Bacon recommended that the claimant be checked out by his own physician and instructed him to do leg stretches and motions while he was on the road to help avoid deep vein thrombosis. Dr. Bacon diagnosed the claimant with having shortness of breath on exertion with the etiology unknown. The claimant was next seen by Dr. Janet Bach on January 12, 2005, for his complaints of extreme shortness of breath and that his throat feels swollen. The doctor notes that he still has shortness of breath mostly when exposed to cold. After examination, the claimant was

diagnosed with shortness of breath, bronchial spasm, obesity, and atypical chest pain. Dr. Bach recommended medications and released him to return to work. The claimant was seen at the Mount Carmel Center on January 19, 2005, with problems of shortness of breath. The claimant reports to the doctor that while he was driving that night, he again developed shortness of breath. The doctor writes that the claimant was staying at a hotel when he became nauseated and vomited prior to calling the squad. The doctor further writes that the claimant called the medics who transferred him to the emergency room. The medical records set forth that due to the claimant's obesity several of the normal tests were not run but after examination Dr. Brooks writes that the claimant was unable to undergo an halical CT for pulmonary embolus because of his weight. Dr. Brooks notes that, therefore duplex dopplers were obtained of the claimant's lower extremities and he had a deep vein thrombosis in his left common femoral vein. Dr. Brooks writes that anti-coagulant therapy was initiated in the emergency room after the results of his tests were obtained. The claimant was diagnosed with deep vein thrombosis left lower extremity and presumed pulmonary embolus and was admitted to the hospital. The claimant underwent a lower extremity venous duplex on January 19, 2005, which was read by Dr. James Sinard on January 20, 2005. Dr. Sinard notes that the tests revealed that in the claimant's left lower extremity there is evidence of deep thrombosis in the femoral vein, noting that the age of the thrombus cannot be determined at this time. The claimant was discharged from Mount Carmel Hospital on January 21, 2005, with an

appointment scheduled with Dr. Bach. The claimant was also discharged with medications, Lovenox as well as Coumadin. Dr. F. Ansari writes on January 23, 2005, that the claimant has been admitted to St. Mary's Hospital due to his shortness of breath and dizziness after being released from a hospital in Ohio where he was diagnosed with a deep vein thrombosis. After examination and review of the claimant's x-rays, Dr. Ansari writes that the claimant's x-ray was negative and his CAT scan was a limited study but showed suspicion for a pulmonary embolism. The doctor assessed the claimant with having acute pulmonary embolism, recurrence of symptoms despite adequate anticoagulation which could be increased stress on the heart or increased physical stress after recent pulmonary embolism and the claimant has a risk factor which includes long distance driving. Dr. Ansari prescribed medications and had him transferred to a telemetry floor. Dr. Bach writes on January 23, 2005, that she also has seen the claimant, reviewed his test results and did an examination which resulted in her assessment of the claimant having bilateral pulmonary embolism with respiratory distress, left thigh deep vein thrombosis, and that he is morbidly obese. After the claimant's release from St. Mary's Hospital, Dr. Bach continued to follow the claimant. Dr. Bach filled out a form from the respondent dated January 29, 2005, setting forth that the claimant is unable to work specifically unable to do driving or lifting. Dr. Bach writes that the claimant will need a repeat CT scan to make sure his pulmonary embolism is clear before he can return to work. Dr. Bach writes on March 24, 2005, that the claimant

reports that he is feeling fine, walking and not using any of his oxygen. Dr. Bach continued the claimant on his Coumadin and notes that they are waiting for the result of his CT scan. Dr. Bach writes on June 8, 2005, to the claimant's attorney setting forth that the claimant had developed a deep venous thrombosis in his leg and bilateral pulmonary embolism which resulted in his need for hospitalization and treatment as well as his inability to work for approximately eight weeks. Dr. Bach notes that while the claimant's obesity is a significant risk factor for blood clots she believes the major cause of his problem (greater than 50 percent of the cause) was his prolonged immobilization while truck driving.

In Dr. Janet Bach's deposition taken on October 17, 2006, the doctor states that she first began to treat the claimant in early January 2005. The doctor was asked if the claimant was not 6'3" tall and weighed approximately 388 pounds to which the doctor replied that the scales in their office only go up to 350 pounds and that he maxed out their scales. The doctor testified that she could not specifically say exactly how much the claimant weighed. After some discussion about the chronological order of the claimant's medical treatment, Dr. Bach was asked if the claimant's condition was not the result of a specific incident identifiable by time and place. Dr. Bach responded "correct," but further added that prolonged immobilization like sitting would increase the risk for a deep vein thrombosis. Dr. Bach agreed that it was not the motion of the truck that would cause this condition, but rather the sitting in the truck for a long period of time. Dr. Bach was specifically asked by the

claimant's attorney, "There was no motion or rapid motion of the truck that caused this, there was no particular incident that caused this. It was just the prolonged immobilization. Is that correct?" Dr. Bach responded, "That is what I believe, yes." Dr. Bach testified that she last saw the claimant on September 5, 2006, and at that visit he did not have any signs of either one of his two conditions, the thrombosis or the embolism. Dr. Bach also agreed that she released the claimant to return to work in late March 2006.

In the doctor's deposition on cross examination, Dr. Bach stated that when she released the claimant she did not list restrictions, but he understood that he should do some stretching exercises. Dr. Bach testified that she considered the primary risk factor in developing deep vein thrombosis to be prolonged immobilization. The doctor noted that obesity increases the risk factor primarily because it increases one's immobilization. Dr. Bach testified that she had recommended that the claimant cease work on January 19, 2005, and that she did not release him to return to work until March 24, 2005.

Ark. Code Ann. §11-9-102(4)(A)(i) sets forth that a compensable injury means an accidental injury causing internal or external physical harm to the body which requires medical service or results in disability or death. Further noting that an injury is accidental only if it is caused by a specific incident and is identifiable by time and place of occurrence. Subsection (ii) sets forth that an injury causing internal or external physical harm to the body and arising out of and in the course of employment if it is not caused by a specific incident or is not identifiable by time and place of

occurrence, if the injury is: (a) caused by rapid repetitive motion. Based on Arkansas law, I find that the claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury as defined by the law. The claimant himself has testified that there was no specific incident which caused his injury and Dr. Bach in her deposition could not say for certain that the claimant's deep vein thrombosis was caused by a specific incident identifiable by time and place, all she could say was that in her opinion it was caused by his immobilization. As to meeting the test under (ii) the claimant's deep vein thrombosis, if in fact it was caused by his immobilization, would certainly be repetitive but could hardly be called rapid. It is also noted that the claimant's obesity is a risk factor which contributes greatly to his problems. In determining this case I also considered Ark. Code Ann. §11-9-114 which sets forth;

(a) A cardiovascular, coronary, pulmonary, respiratory or cellulovascular accident or myocardial infarction causing injury, illness, or death is a compensable injury only if 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 is extraordinary or 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.

It would seem that deep vein thrombosis or a pulmonary embolism would fall within the definition of a coronary or pulmonary problem and the

testimony present in this case does not set forth any unusual or extra ordinary activity on the part of the claimant other than sitting in his truck which is a part of his regular job. Therefore, this claim should be denied in its entirety.

FINDINGS & CONCLUSIONS

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

2. On January 4, 2005, the relationship of employee-employer-carrier existed between the parties.

3. The claimant is entitled to the maximum compensation rate for 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 in January 2005.

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 in January 2005. Therefore, this claim should be denied in its entirety.

IT IS SO ORDERED.

ELIZABETH DANIELSON
ADMINISTRATIVE LAW JUDGE