

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F610565

LISA N. STONE, WIDOW AND GUARDIAN OF CAITLYN GARZA, STEP-CHILD OF JEFFERY MICHAEL STONE (Dec'd), EMPLOYEE	CLAIMANTS
KOHL'S DEPARTMENT STORES, INC., EMPLOYER	RESPONDENT
LIBERTY INSURANCE CORPORATION, INSURANCE CARRIER/TPA	RESPONDENT #1
DEATH & PERMANENT TOTAL DISABILITY TRUST FUND	RESPONDENT #2

OPINION FILED JULY 9 , 2007

Hearing before Chief Administrative Law Judge David Greenbaum on May 24, 2007, at Little Rock, Pulaski County, Arkansas.

Claimants represented by Mr. Scott A. Scholl, Attorney-at-Law, Jacksonville, Arkansas.

Respondents #1 represented by Mr. James A. Arnold, II, Attorney-at-Law, Fort Smith, Arkansas.

Respondent #2 did not appear.

STATEMENT OF THE CASE

A hearing was conducted May 24, 2007, to determine compensability of injuries which resulted in the death of Jeffery Michael Stone on September 6, 2006.

A prehearing conference was conducted in this claim on March 21, 2007, and a Prehearing Order was filed on said date. At the hearing, the parties announced that the stipulations, issues, as well as their respective contentions as set out in the Prehearing Order remain the same, subject to an additional stipulation concerning the decedent's average weekly wage, as well as a specific reservation to revisit the

dependency issues upon completion of additional discovery by the Death and Permanent Total Disability Trust Fund, as set out further below.

At the prehearing conference, it was stipulated that the employee/employer/carrier relationship existed between the decedent and respondents #1 at all relevant times, including September 6, 2006; that the decedent was involved in a fatal motor vehicle accident on said date; that he earned sufficient wages to entitle his dependents to the maximum applicable compensation rates in the event compensability was determined; and that the claim had been controverted in its entirety for purposes of attorney's fees. It was further agreed that the decedent was providing employment services at the time of his fatal accident. At the hearing, it was further agreed that the decedent's average weekly wage was \$910.26.

The claimants contended, in summary, that Jeffery Stone's injuries and death arose out of and during the course of his employment with Kohl's Department Store, entitling his widow, Lisa N. Stone, and step-child, Caitlyn Garza, to applicable dependency benefits, payment of funeral and burial expenses, as well as a controverted attorney's fee on any benefits awarded.

The respondents #1 contended that the decedent's accident and death were caused by a personal medical condition and does, therefore, not meet the definition of a compensable injury under the Arkansas Workers' Compensation Act.

Respondent #2, the Death and Permanent Total Disability Trust Fund, was

not joined as a party until shortly before the scheduled hearing. The Trust Fund agreed to defer to the outcome of litigation regarding the issue of compensability. However, the Fund reserved the right to revisit the dependency issues until it had an opportunity to complete discovery relevant to any eligible dependents. Respondents #1 did not dispute the dependency of either the widow or minor step-child; however, rather than delay the adjudication of the compensability issue, the parties agreed to proceed on the issue of compensability, reserving the Fund's right to revisit the dependency issue without adversely affecting respondents #1's ability to claim the protection of its statutory maximum liability. (Tr.22-25)

Accordingly, the sole issue presented for determination was whether Jeffery Michael Stone's death arose out of and during the course of his employment.

The claimant, Lisa N. Stone, testified in her own behalf. Larry Johnson, Trooper Eric Schrock, and Deputy Coroner, Donald Bullock, were called as witnesses by respondents #1. The record is composed of the transcript of the May 24, 2007, hearing containing numerous medical records and documentary evidence introduced by both parties, together with the evidentiary depositions of Dr. Christopher B. Skelley, Danna Raeburn, and Lonnie Griffith which were introduced as "Joint Exhibit A," "Joint Exhibit B," and "Respondent #1's Exhibit B," respectively, and retained in the Commission file in bound form. Both parties submitted post-hearing briefs.

From a review of the record as a whole, to include medical reports,

documents and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witnesses and to observe their demeanor, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. §11-9-704:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations agreed to by the parties are hereby accepted as fact.
3. The claimant has proven, by a preponderance of the credible evidence, that the death of Jeffery Michael Stone on September 6, 2006, arose out of and during the course of his employment with Kohl's Department Stores, Inc., thus entitling eligible beneficiaries to dependency benefits and other benefits pursuant to Ark. Code Ann. §11-9-527.
4. A preponderance of the credible evidence reflects that the accident which resulted in the death of Jeffery Michael Stone was caused by an idiopathic loss of his faculties while driving a vehicle during the course of his employment. However, the death of Mr. Stone was caused by the blunt force trauma from the accident rather than the underlying idiopathic medical condition. The decedent's employment contributed to his death because of the increased dangerous effect of being required to drive a vehicle on the highways, and, thus, the claim is compensable.

5. Issues concerning who are eligible dependents has been specifically reserved.

#### DISCUSSION

On September 6, 2006, Jeffery Stone was driving west-bound on I-40 from the Little Rock area to a Kohl's Department Store in Fort Smith, Arkansas. He was an employee of Kohl's at the time and trip was work-related. Near the Alma exit, Mr. Stone was traveling in the left-hand lane when the pickup truck he was driving suddenly veered into the median, crossed the east-bound lane and collided with a tree. Mr. Stone was pronounced dead at the accident scene.

Mr. Stone's widow, Lisa Stone, claimant herein, brought a claim for compensation pursuant to A.C.A. §11-9-527. A hearing was held on May 24, 2007. Both parties submitted trial briefs subsequent to the hearing in support of their respective positions. Claimants contend that Mr. Stone's death arose out of his employment and that the cause of Mr. Stone's accident was unknown and unexplained and, therefore, compensable. Respondents maintained that the evidence establishes that his death was due to his underlying medical condition or "idiopathic," thus not meeting the definition of a compensable injury under the Arkansas Workers' Compensation Act. Although a preponderance of the credible evidence reflects that the incident or accident was caused by the decedent's personal medical condition, the claim is nevertheless compensable because Mr. Stone's death resulted from the blunt force trauma of striking the tree at a high rate of speed.

The record reflects that the decedent suffered from multiple medical conditions that placed him at risk for heart attack or stroke. The evidentiary deposition of Dr. Christopher Skelley, an internal medicine specialist and the decedent's treating physician, was introduced as "Joint Exhibit A." Dr. Skelley's deposition reflects that Mr. Stone was extremely overweight; had a history of smoking and an elevated cholesterol level; generalized atherosclerotic disease; had been diagnosed with polycythemia, a condition characterized by increased red blood cells or, in layman's terms, a thickening of the blood; had been diagnosed with severe obstructive sleep disorder; as well as Type II diabetes. Dr. Kelley testified that obesity, smoking, polycythemia, obstructive sleep apnea, and Type II diabetes all carry increased risk for thrombosis, heart attacks, and strokes which can lead to sudden death. However, there is no competent medical evidence that the claimant suffered a heart attack or stroke, much less a fatal episode.

Respondents #1 argued that the circumstances surrounding the automobile accident demonstrate that Mr. Stone died from one or more of his underlying medical conditions prior to the accident. In support of their conclusion, respondents #1 offered the testimony of Lonnie Griffith, a truck driver who witnessed the accident, as well as Trooper Eric Schrock, who investigated the accident. Mr. Griffith's evidentiary deposition was introduced as "Respondents #1 Exhibit B." He was driving an 18-wheeler in the west-bound lane of I-40 when Mr. Stone passed him in the left lane, seconds before the accident. He described the weather as clear and the road dry. He asserted that there was no animal, debris, or other object that

would have caused Mr. Stone to dramatically turn into the median. Mr. Griffith did not observe any corrective or evasive action by Mr. Stone at any time after the truck veered off the road. He stated that the truck maintained a constant speed, estimated at 70 miles per hour, as if the cruise control was on while it sped into the tree. No braking was observed and the truck traveled at a consistent angle after leaving the road. Mr. Griffith opined that, based on his observations, the decedent had a heart attack.

The investigating officer, State Trooper Eric Schrock, corroborated the testimony of Mr. Griffith. Trooper Schrock stated that because there was no evidence of evasive or corrective action over a long distance, he did not think falling asleep caused the accident. He also ruled out other likely causes of the accident other than a personal medical condition. When considering the circumstances of the accident, specifically, the testimony of Mr. Griffith and Officer Schrock, together with the medical testimony of Dr. Skelley, it is herein concluded that Mr. Stone suffered a medical emergency at the time of the motor vehicle accident. It is further concluded that the cause of the accident was Mr. Stone's underlying medical condition. However, contrary to the arguments advanced by respondents, the credible expert testimony reflects that Mr. Stone died as the result of the blunt force trauma and not any of his underlying medical conditions.

Deputy Coroner Donald Bullock was called as a witness by respondents #1. Mr. Bullock has been a deputy coroner for approximately eighteen (18) months. He has worked in law enforcement most of his adult life, having retired from the

Sebastian County Sheriff's Department. His illuminating testimony clearly reflects that Mr. Stone did not die prior to the accident. A portion of his testimony is set out below:

#### CROSS EXAMINATION

BY MR. SCHOLL:

Q You had mentioned that there wasn't any blood in the heart?

A Right.

Q Okay. Can you explain to the Court is there any significance to that?

A That basically tells us that his heart was beating when he became injured and the blood left him under pressure. We look at that and also how much blood is actually in the vehicle, around the scene, and whether it appears like it just drained out. You can cut an arm off, and the only blood you're going to have is whatever is right there in that little local area, and you won't have a handful. But if the heart's beating and you cut that arm off, it's going to shoot everywhere. So that's – you know, like in this particular case, he was encapsuled. The truck was kind of U-shaped, and he was in the bottom with it all just folded in around him, and that little area he was in was just basically a pool of blood under there, you know, and it was all over the place like it had come out under pressure when it hit. Of course, you know, these things only take seconds for him to basically bleed out and for the brain to shut down the heart and all that. It takes, you know, just a matter of – well, I don't know, a few seconds up to the I think maximum of three minutes, but –

Q It sounds like his heart was beating at lease fairly strongly at the point of impact?

A That was the appearance that we got from it.

Q And to your knowledge, is there any explanation other than the impact itself of what would have caused Mr. Stone's death?

A No, sir. I was convinced that, you know, especially there's no way he could have survived that accident. You know, I looked at it and determined that as far as I was concerned, he was alive, his heart was beating when he hit the tree, and, you know, there's definitely enough injuries and enough impact to kill him, you know,

when he hit the tree. So, you know, as far as if he had some other medical condition, it would just be speculation on my part.

Q Okay. So your investigation didn't reveal any other medical condition that might have contributed?

A No, sir.

Q And I realize that this might seem like kind of a simple question, but you listed blunt force trauma as the cause of death. Can you kind of describe the injuries, and why you said it was blunt force trauma?

A Yeah. I can show you a picture, if you'd like. Both of his legs were broken in multiple places. One leg was just basically hanging from the skin. Both arms were broken. He didn't have a lot of head injuries. He had some minor cuts and things on his face, on his chest. I felt like maybe some of his ribs were broken. We could push them in real easily. He took quite an impact. He had one leg that was – as a matter of fact, when we rolled him out of the truck, the leg was turned around the other – the opposite direction. It wasn't even connected other than just the skin and the meat.

MR. ARNOLD [sic]: I'll pass the witness, Your Honor.

#### EXAMINATION BY THE COMMISSION

BY JUDGE GREENBAUM:

Q Mr. Bullock, I guess to summarize your testimony, it's your expert opinion that you don't know what was the cause of the accident, but the cause of the death was the collision?

A Yes, sir. That's basically it. I have no idea why he ran off the road, and I don't – from what I heard out there, nobody else did either. But, you know, he did, in fact, go off the road and appeared to have went straight into a tree. He went across the medial and across two other lanes and across the right-of-way and, you know, a considerable distance, and into a tree at a high rate of speed.

Q But it's your opinion that he was alive at the time of the collision?

A Yes, sir.

Q Thank you.

A He could have been unconscious –

Q I understand. (Tr.65-68)

Arkansas law draws a distinction between injuries arising from an unexplained cause and those arising from an idiopathic cause. See, *ERC Contractor Yard & Sales v. Robertson*, 335 Ark. 63, 977 S.W.2d 212 (1998); *Swaim v. Wal-Mart Assoc., Inc.*, 91 Ark. App. 120, 208 S.W.3d 837 (2005). When an employee suffers an “unexplained injury” it is compensable. In contrast, when an employee suffers an “idiopathic injury” the injury is personal in nature or peculiar to an individual and is not compensable unless the employment contributes to the injury or increases the dangerous effect. *Little Rock Convention and Visitors Bureau v. Pack*, 60 Ark. App. 82, 959 S.W. 2d 415 (1997).

It can be logically concluded that the decedent’s accident arose from a personal medical condition. While an idiopathic injury is normally not compensable when it arises from a condition personal to the employee, an idiopathic injury becomes compensable when the circumstances of employment place the employee in a position that increases the danger or seriousness of the injury. *ERC Contractor Yard & Sales v. Robertson, supra*, at P.71. Awards are uniformly made when the employee’s idiopathic loss of his or her faculties took place while he or she was in a moving vehicle, as in the case of a delivery worker whose job required the employee to be at the wheel of a truck and who “blacked out” during an asthmatic attack and went into the ditch, and of an employee who was on a motor scooter

when he lost consciousness. It seems obvious that the obligations of their employment had put these employees in a position where the consequences of blacking out were markedly more dangerous than if they had not been so employed.

1 Larson's Workers' Compensation Law, §9.01[2], at 9-4 (2006).

The claimant argues that the cause of the decedent's accident is unknown and speculative at best. I do not agree. I find that the cause of the accident was idiopathic rather than unexplained. Nevertheless, it is undisputed that the decedent was performing employment services at the time of the accident and that he was alive at the time his vehicle collided with the tree. It would require sheer speculation and conjecture to conclude that the decedent would have died absent the blunt force trauma which caused his death. The decedent's employment duties greatly increased the danger and seriousness of the accident. Under our workers' compensation laws, this claim is clearly compensable.

If compensability is overcome, respondents #1 do not dispute liability for funeral expenses. Likewise, respondents #1 do not dispute that both the widow, as well as the step-child of the decedent are entitled to dependency benefits pursuant to A.C.A. §11-9-527(c). As previously pointed out, the Death and Permanent Total Disability Trust Fund was joined as a party-respondent shortly before the hearing. It specifically reserved the right to revisit the dependency issues upon completion of discovery. Accordingly, by necessity, all additional issues have been specifically reserved.

It is well-settled that claimant has the burden of proving the job-relatedness of any alleged injury, without the aid of any kind of presumption in her favor. *Pearson v. Faulkner Radio Service*, 220 Ark. 368, 247 S.W.2d 964 (1952); *Farmer v. L.H. Knight Company*, 220 Ark. 333, 248 S.W.2d 111 (1952). The burden of proof claimant must meet is preponderance of the evidence. *Voss v. Ward's Pulpwood Yard*, 248 Ark. 465, 425 S.W.2d 629 (1970). Under prior law, it was the duty of the Commission to draw every legitimate inference in favor of the claimant and to give claimant the benefit of the doubt in making factual determinations. However, current law requires that evidence regarding whether or not claimant has met the burden of proof be weighed impartially, without giving the benefit of the doubt to either party. Arkansas Code Annotated §11-9-704(c)(4); *Wade v. Mr. C.Cavanaugh's*, 298 Ark. 363, 768 S.W.2d 521 (1989); *Fowler v. McHenry*, 22 Ark. App. 196, 737 S.W.2d 663 (1987).

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that the claimant has sustained her burden of proving that the death of Jeffery Michael Stone arose out of and during the course of his employment, entitling his estate to funeral expenses and all eligible beneficiaries to dependency benefits pursuant to Ark. Code Ann. §11-9-527.

IT IS SO ORDERED.

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DAVID GREENBAUM  
Chief Administrative Law Judge