

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F208822

BILLY G. SWEANEY,
EMPLOYEE

CLAIMANT

L. A. DARLING CO.,
EMPLOYER

RESPONDENT

CONSTITUTION STATE SERVICES,
INSURANCE CARRIER

RESPONDENT

OPINION FILED OCTOBER 20, 2003

Upon review before the FULL COMMISSION in Little Rock,
Pulaski County, Arkansas.

Claimant represented by HONORABLE KENNETH A. OLSEN, Attorney
at Law, Little Rock, Arkansas.

Respondents represented by HONORABLE RICHARD LUSBY, Attorney
at Law, Jonesboro, Arkansas.

Decision of the Administrative Law Judge: Reversed.

OPINION AND ORDER

The respondents appeal an opinion and order filed by the Administrative Law Judge on April 29, 2003. In that opinion and order, the Administrative Law Judge found that the claimant has proven by a preponderance of the evidence that he sustained a compensable injury arising out of and in the course of his employment. Specifically, the Administrative Law Judge found that the claimant sustained a compensable "unexplained" injury at work on June 26, 2002. After conducting a de novo review of the entire record, we find that the greater weight of the evidence establishes

that the claimant was experiencing symptoms from his back injury at issue prior to his arrival at work on June 26, 2002, and that the symptoms he experienced at work that day were simply a recurrence of symptoms of an injury that manifested itself prior to his arrival at work. Therefore, we find that the decision of the Administrative Law Judge must be reversed.

For an employee's injury to be compensable under the Arkansas Workers' Compensation Law, it must result from an injury "arising out of and in the course of employment." Ark. Code Ann. § 11-9-401 (Repl. 2002). An injury occurs "in the course of employment" when it occurs "within the time and space boundaries of the employment, while the employee is carrying out the employer's purpose, or advancing the employer's interests directly or indirectly." City of El Dorado v. Sartor, 21 Ark. App. 143, 729 S.W.2d 430 (1987). The phrase "arising out of the employment" refers to the origin or cause of the accident, so it must be shown that a causal connection exists between the injury and the employment. Gerber Products v. McDonald, 15 Ark. App. 226, 691 S.W.2d 879 (1985). In order for an injury to arise out of the employment, it must be a natural or probable consequence or incident of the employment and a natural

result of one of its risks. J & G Cabinets v. Hennington, 269 Ark. 789, 600 S.W.2d 916 (Ark. App. 1980).

However, when an employee sustains an "unexplained" injury at work, the injury is compensable. By contrast, when an employee sustains an "idiopathic" injury at work, the injury is, generally, not compensable because the injury is personal in nature, and therefore does not arise out of and in the course of employment. See generally, Little Rock Convention & Visitors Bureau v. Pack, 60 Ark. App. 82, 959 S.W.2d 415 (1997). The Court of Appeals explained the distinction in Moore v. Darling Store Fixtures, 22 Ark. App. 21, 732 S.W.2d 496 (1987):

When one suffers an injury at work, the cause is, obviously, either known or unknown. Larson's treatise on workers' compensation law states that the most common example of a situation in which the cause of the harm is unknown is the unexplained fall in the course of employment and that most courts confronted with that situation have seen fit to award compensation. 1 Larson, The Law of Workmen's Compensation, § 10.31, at 3-87 (1985). However, injuries from idiopathic falls do not arise out of the employment unless the employment contributes to the risk or aggravates the injury by, for example, placing the employee in a position which increases the dangerous effect of the fall, such as on a height, near machinery or sharp corners, or in a moving vehicle. Larson § 12.11.

The word "idiopathic" is defined in Webster's Third New International Dictionary, Unabridged (1976), as (1) peculiar to the individual, (2)

arising spontaneously or from an obscure or unknown cause. Although the two concepts are frequently confused, Larson says "unexplained fall cases begin with a completely neutral origin of the mishap, while idiopathic-fall cases begin with an origin which is admittedly personal and which therefore requires some affirmative employment contribution to offset the prima facie showing of personal origin." Larson § 12.11, at 3-314.

Moore, 22 Ark. App. at 25, 732 S.W.2d at 498.

In the present case, the claimant was employed by L. A. Darling Company as a forklift driver in its warehouse. On the morning of June 26, 2002, the claimant bent over to reverse an identification tag on a container of parts. The claimant gave conflicting testimony as to what occurred immediately thereafter. In some portions of his testimony, the claimant seems to indicate that he began to raise up, experienced a sharp pain in his back, and then coughed. At other points in his testimony, the claimant appears to indicate that he began to raise up, he then coughed, and then experienced a sharp pain in his back. The Administrative Law Judge's opinion indicates that the claimant testified that he coughed while he was raising up, and then experienced a sharp pain in his back. Based on the Administrative Law Judge's perception of the testimony, the Administrative Law Judge has found that the claimant experienced a compensable "unexplained" fall.

However, we note that the Administrative Law Judge's opinion and order fails to acknowledge the contemporaneous history contained in Dr. Bonner's June 26, 2002 report. That report attributes the claimant's onset of back pain to neither lifting up at work or coughing at work. To the contrary, the history which Dr. Bonner took, to which we accord great weight, indicates that the claimant awoke on the morning of June 26, 2002 "with right lower quadrant pain which radiates some into his back, and some into his flank." Notably, at the time Dr. Bonner recorded this history on June 26, 2002, the claimant was under the mistaken impression that he was experiencing symptoms from kidney stones, rather than symptoms attributable to a disk herniation in his low back. Only after the claimant was properly diagnosed with a disk herniation did his history provided to Dr. Bonner change and relate his symptom onset to an incident at work. Even when his history did change, we note that the history that the claimant provided to Dr. Bonner on July 15, 2002 indicates that the acute symptoms that he experienced in his back at work on June 26, 2002 occurred after coughing, and make no specific mention of lifting up as a causative factor. At any rate, because we accord great weight to the contemporaneous history that Dr.

Bonner took on June 26, 2002, indicating that the claimant awoke with back symptoms on that date, we find that any acute symptoms that the claimant experienced after he went to work on June 26, 2002 were simply a recurrence of symptoms of an injury which manifested itself when he awoke that morning. Because we find that the claimant experienced recurrent symptoms of a preexisting injury while at work on June 26, 2002, we find that the Administrative Law Judge's finding that the injury arose out of and in the course of the claimant's employment on June 26, 2002 must be, and hereby is, reversed.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Turner dissents.