

**NOT DESIGNATED FOR PUBLICATION**

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F100372

LYLE FOUTS,  
EMPLOYEE

CLAIMANT

CLOVERLEAF EXPRESS,  
EMPLOYER

RESPONDENT

COMMERCE & INDUSTRY INSURANCE COMPANY,  
INSURANCE CARRIER

RESPONDENT

OPINION FILED MAY 18, 2004

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

Claimant represented by HONORABLE KENNETH KIEKLAK, Attorney  
at Law, Fayetteville, Arkansas.

Respondents represented by HONORABLE R. SCOTT MORGAN,  
Attorney at Law, Pine Bluff, Arkansas.

Decision of the Administrative Law Judge: Affirmed and  
Adopted.

OPINION AND ORDER

This case comes on for review by the Full  
Commission on appeal by respondents from an opinion filed  
herein by an Administrative Law Judge on August 29, 2003.

The Administrative Law Judge entered the following  
findings of fact and conclusions of law:

1. The Arkansas Workers' Compensation  
Commission has jurisdiction of this  
claim.
2. On December 15, 2000, the  
relationship of employee-employer-

carrier existed between the parties.

3. On December 15, 2000, the claimant earned wages sufficient to entitle him to weekly compensation benefits of \$394.00 for total disability and \$296.00 for permanent partial disability.
4. On December 15, 2000, the claimant sustained a compensable cardiovascular and cerebrovascular injury, within the meaning of Ark. Code Ann. § 11-9-114. Specifically, the claimant has proven by the greater weight of the credible evidence that on December 15, 200, he was involved in a specific employment related accident that was the major cause of the physical harm to his heart and brain and that this employment related accident took the form of physical exertion that was extraordinary and unusual in comparison to the claimant's usual work in the course of the claimant's regular employment with the respondent.
5. The medical services provided the claimant for his compensable coronary and cerebral difficulties by and at the direction of the initial emergency medical personnel, by and at the direction of medical personnel at the Magnolia Regional Health Center, by and at the direction of Dr. Margaret Ellis, by and at the direction of Dr. Michael D. Green, and by and at the direction of Dr. David A. Davis constitute reasonably necessary medical

services within the meaning of Ark. Code Ann. § 11-9-508. Pursuant to the provisions of this section, the respondents are liable for the expense of these services, subject to the medical fee schedule established by this Commission.

6. The claimant has been rendered temporarily totally disabled as a result of his compensable injury for the period beginning December 16, 2000 and continuing until a date yet to be determined, but at least through the date of hearing on December 3, 2001.
7. The respondents have denied the occurrence of any compensable injury on December 15, 2000, and have controverted the claimant's entitlement to any and all benefits.
8. A reasonable fee for the claimant's attorney is the maximum statutory attorney's fee on all benefits herein and hereinafter awarded.

We have carefully conducted a de novo review of the entire record herein, and it is our opinion that the decision of the Administrative Law Judge is correct and should be affirmed. Specifically, we find from a preponderance of the evidence that the findings of fact made by the Administrative Law Judge are correct, and they are, therefore, adopted by the Full Commission.

We therefore affirm the August 29, 2003 opinion of the Administrative Law Judge, including all findings of fact and conclusions of law therein, and adopt the opinion as the decision of the Full Commission. All accrued benefits shall be paid in a lump sum without discount and with interest thereon at the lawful rate from the date of the Administrative Law Judge's decision in accordance with Ark. Code Ann. § 11-9-809 (Repl. 2002).

Since the claimant's injury occurred prior to July 1, 2001, the claimant's attorney's fee is governed by the provisions of Ark. Code Ann. § 11-9-715 as it existed prior to the amendments of Act 1281 of 2001. Compare Ark. Code Ann. § 11-9-715 (Repl. 1996) with Ark. Code Ann. § 11-9-715 (Repl. 2002). For prevailing on this appeal before the Full Commission, claimant's attorney is hereby awarded an additional attorney's fee in the amount of \$250.00 in accordance with Ark. Code Ann. § 11-9-715(b) (Repl. 1996).

IT IS SO ORDERED.

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OLAN W. REEVES, Chairman

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SHELBY W. TURNER, Commissioner

Commissioner McKinney dissents.

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**DISSENTING OPINION**

I respectfully dissent from the majority opinion finding that the claimant sustained a compensable cardiovascular and cerebrovascular injury within the meaning of A.C.A. § 11-9-114, for which he is entitled to benefits.

In Worker's Compensation law, A.C.A. §11-9-114 governs heart attacks and provides, in relevant part, that "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." "Major cause" means more than fifty percent (50%) of the cause. A.C.A. §11-9-102(14) (Supp. 1999) "Accident," as it applies to the above stated statute, is defined 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, 939 S.W.2d 855 (1997); See also, A.C.A. §11-9-102(5) (A) (i) (Repl. 1996) Moreover, to be a compensable injury, there must be a showing 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, alternately, that some unusual and unpredicted incident occurred which is found to have been the major cause of the physical harm." (Id., at (b)(1)) In Ulibarri v. Jim Wood Company, Inc., 79 Ark. App. 354, 87 S.W.2d 846 (2002), our Court of Appeals summarized the above as follows: "To qualify as a compensable injury, the exertion of work necessary to precipitate the myocardial infarction had to be extraordinary and unusual compared to the employee's usual work in the course of his regular employment or that some unusual and unpredicted incident must have occurred that was the major cause of the physical harm." See also, Beeson v. Landcoast and Cigna, 43 Ark. App. 132, 862 S.W.2d 846 (1993).

In the present case, the claimant, a truck driver, asserts that his cardiac event was caused from the physical exertion of helping lift a conveyor line back onto a customer's loading dock after it had fallen from the back of his truck trailer. The majority is correct in finding that this event qualifies as an "accident" pursuant to the above stated definition, in that it was caused by a specific incident identifiable by time and place of occurrence. Blytheville, supra. From the evidence presented, it is also correct that the physical exertion expended by the claimant

prior to his myocardial infarction was somewhat unusual and perhaps extraordinary compared to that which he normally exerted in his line of work. In his testimony, the claimant described his type of truck driving job as a "drop and hook job," meaning that he would drive to one location, drop one trailer off, and hook up to another trailer then leave. Although not normally required to assist in such activities as the one which precipitated his heart attack, the claimant testified that, despite the obvious risks given his known, preexisting heart condition, he considered his willingness to do so to be part of his job.

Q. Are you familiar with the conveyor ramps that are used to load or unload trucks at the Wal Mart docks?

A. Yes, sir, I am.

Q. Do you have any idea as to how much those ramps weigh?

A. Guessing, seven or eight hundred pounds.

Q. During the time that you were employed with Cloverleaf, hypothetically, sir, if someone at Wal Mart would have asked you to help lift one of those, ... ramps, would you have assisted them?

A. Yes.

Q. And why was that?

A. Because you just do what they ask you to do. I mean I wouldn't have never thought about it; I would have been glad to help them.

Q. Would you have considered it part of your job?

A. Yes.

Although helping lift heavy loading ramps was apparently not a routine activity for the claimant, whether or not it is unusual for ramps to become dislodged during loading was not revealed in the record. Since the record was devoid of any evidence to prove otherwise, it is impossible to know without resorting to speculation and conjecture if the incident which precipitated the claimant's heart attack was "unusual" or "unpredicted". Albeit this claim marginally meets the statutory requirements for compensability in terms of the above stated elements, I find that the weight of the credible evidence in this case does not support a finding that this accident was the "major cause" (more than 50%) of the claimant's actual physical harm, namely his heart attack and brain damage.

In the Opinion and Order filed August 29, 2003, by the Administrative Law Judge, which has been affirmed and adopted by the majority, the following facts are conceded:

- 1) The claimant had "longstanding cardiac difficulties," which had required a four-vessel bypass surgery to be performed in October of 1991.
- 2) Subsequent to his bypass surgery, the claimant suffered from frequent episodes of angina, hypertension, and high cholesterol.
- 3) A cardiac catheter study performed on January 8, 2001, revealed a 100% occlusion of both his right main coronary artery and his second obtuse marginal artery; a 75% occlusion of his left main coronary artery; and, a 90% occlusion of his first obtuse marginal artery.

According to the medical evidence presented in this case, at the time of his heart attack which is the subject of this claim, the only functional graft remaining from the claimant's previous bypass surgery was a left internal mammary graft, to the left anterior descending artery (LAD). Moreover, the claimant is a lifetime smoker (since age 12), and at the time of his heart attack of December 15, 2000, admittedly smoked as much as a pack and a half of "cigars" daily. Furthermore, medical records reveal that the claimant's father and grandfather each suffered from

coronary artery disease and myocardial infarction at relatively young ages. In addition to those medical conditions previously mentioned, medical records reveal that the claimant's past medical history includes hypertension, hypercholesterolemia (hyperlipidemia), tuberculosis, hiatal hernia, gastrointestinal bleeding, and surgery for gunshot wound and stab wound to the chest requiring thorascopic drainage." Moreover, although the claimant and his spouse testified that he had shown no symptoms of cardiac problems recently prior to his heart attack of December 15, 2000, (i.e, angina), medical evidence indicates that the claimant had been taking increased doses of nitroglycerin for several weeks before this event, reportedly for "shortness of breath." A Report of Consultation submitted by Dr. John Prather on December 16, 2000, reveals that the claimant's wife stated that the claimant was "supposed to be on some type of heart medication [prior to his heart attack], but simply could not afford this and his wife does not remember the name." Lastly, although the medical evidence indicates that the claimant's seizure was secondary to his myocardial infarction, at least one physician, David A. Davis of Neurological Associates in Fayetteville, Arkansas, did not rule out the possibility that the claimant's heart attack

was secondary to his seizure. In a letter from Dr. Davis to Dr. Margaret Ellis dated January 5, 2001, Dr. Davis stated, "It is very likely that his [claimant's] loss of consciousness was the result of cardiac dysfunction with a secondary seizure. It is always possible that the seizure was the insighting event, but given his long history of atherosclerotic heart disease with recurring angina, that seems to be the more likely etiology." (Emphasis added) Although later testing revealed normal brain functioning, the possibility that the claimant seized prior to his heart attack was never again addressed within the medical records submitted for review in this case.

In summary, I find that the weight of the credible medical evidence in this case reveals that the claimant suffered, from among other things, atherosclerotic coronary heart disease, which according to Dorland's Illustrated Medical Dictionary, 27<sup>th</sup> Edition (Published 1988), is a common form of arteriosclerosis (sclerosis and thickening of the walls of the smaller arteries). The claimant had undergone cardiac catheterization procedure and triple coronary artery bypass graft surgery in 1991 to help alleviate his condition, but by the time of his December 15, 2000, heart attack, tests revealed that the claimant's

chronic sclerosis had severely blocked most of his coronary arteries. Laboratory results from testing ordered by Dr. Margaret Ellis on July 25, 2000, showed that the claimant's cholesterol, triglycerides, LDL's, and VLDL's, were all well above normal limits, making the claimant a high cardiac risk. These tests were done nearly (5) five months prior to the claimant's heart attack in December of 2000. In addition, the claimant has continued to smoke long after being advised by doctors to quit, and he has a family history of fatal heart problems. In a letter from Dr. Michael Green to the claimant's counsel dated August 7, 2001, Dr. Green stated that "considering his risk factors and known coronary artery disease," the claimant's participation in lifting the conveyor belt "put an enormous strain on his heart at the same time that [his heart] was not getting adequate blood flow." Thus, he opined, this activity was "easily greater than a 50% major cause of his [claimant's] injury." However, prior to stating this conclusion Dr. Green admitted that, if not completely revascularized, the claimant was clearly at risk of future ventricular arrhythmia. "The natural progression of bypass grafts over a period of five or six years," explained Dr. Green, "makes one at risk of having further development

of an atherosclerotic process in that bypass graft." In essence, the claimant was a heart attack waiting to happen.

Based upon the above and foregoing, I find that the preponderance of the evidence does not support a finding that the exertion which precipitated the claimant's heart attack of December 15, 2000, was the major cause of the claimant's heart attack or brain damage. The medical evidence presented in this case makes it obvious that the claimant's chronic atherosclerotic coronary heart disease was the major cause of the claimant's heart attack and brain damage, regardless of the circumstances surrounding his attack. Accordingly, I find that the claimant did not establish the compensability of his claim.

Therefore, for all the reasons set forth herein, I respectfully dissent from the majority opinion.

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KAREN H. MCKINNEY, Commissioner