

**NOT DESIGNATED FOR PUBLICATION**

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F312921

BRADLEY HOWARD,  
EMPLOYEE

CLAIMANT

WESTERN SIZZLIN,  
EMPLOYER

RESPONDENT

HOSPITALITY ASSOCIATION WORKERS'  
COMPENSATION TRUST,  
INSURANCE CARRIER

RESPONDENT

OPINION FILED DECEMBER 21, 2004

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

Claimant represented by HONORABLE JAY TOLLEY, Attorney at  
Law, Fayetteville, Arkansas.

Respondents represented by HONORABLE GAIL O. MATTHEWS,  
Attorney at Law, Little Rock, 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 April 15, 2004.

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

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on January 28, 2004, and contained in a pre-hearing order filed that same date, are hereby accepted as fact.
2. The parties' stipulation that claimant earned an average weekly

wage of \$85.84 which would entitle him to compensation at the rate of \$57.00 per week for temporary total disability benefits is also hereby accepted as fact.

3. Claimant suffered a syncopal event while working for respondent on June 13, 2003. This syncopal event constitutes an unexplained fall and is therefore a compensable injury.
4. Respondent is liable for payment of all reasonable and necessary medical treatment provided in connection with claimant's compensable injury. This includes testing performed by claimant's treating physicians.
5. Claimant is entitled to temporary total disability benefits beginning June 14, 2003 and continuing through July 5, 2003.
6. Respondent has controverted claimant's entitlement to unpaid indemnity benefits.

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 April 15, 2004 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 after July 1, 2001, the claimant's attorney's fee is governed by the provisions of Ark. Code Ann. § 11-9-715 as amended by 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 \$500.00 in accordance with Ark. Code Ann. § 11-9-715(b) (Repl. 2002).

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 an unexplained compensable fall on June 13, 2003, which was within the course and scope of his employment. The Administrative Law Judge awarded the claimant temporary total disability benefits beginning June 14, 2003, and continuing through

July 5, 2003. The respondents were found liable for payment of all reasonable and necessary medical treatment provided in association with the claimant's compensable injury, including testing performed by claimant's treating physicians.

In my opinion, a carefully conducted de novo review of this claim in its entirety reveals that the claimant has failed to prove by a preponderance of the evidence that the syncopal event that caused his fall constitutes an unexplained injury. Rather, the greater weight of the evidence indicates that the claimant's fall was idiopathic, and is, therefore, not compensable.

The claimant, who was 16 years old at the time of the incident, began working part-time as a fry cook for the respondent employer in February of 2002. On the date of the incident, the claimant had been outside breaking down boxes for a period of about thirty minutes when he suddenly fainted. Prior to this event, the claimant had been inside the restaurant cooking. The claimant testified that he had been on duty for approximately two hours at the time of this event, and that he had been feeling "perfectly fine." The claimant further testified that the temperature outside was approximately 70°, that he could not recall having slipped on anything, and that the last thing he remembered was

breaking a box apart. The claimant denied having a history of seizures.

The claimant was found by a co-worker, disoriented and confused, and he was taken to the emergency room of the Northwest Medical Center. A CT scan of the claimant's head proved unremarkable as did an X-ray of the claimant's spine. An electroencephalogram and MRI were taken on June 25, 2003, and both revealed normal results. Subsequently, neurologist, Dr. Michael W. Morse, ruled out seizure, pre-existing abnormalities, and heat stroke as causes of the claimant's episode. Although Dr. Morse opined that the claimant possibly became overheated, he ultimately opined that the etiology of the claimant's syncopal event was "unknown."

Arkansas Code Annotated § 11-9-102, in relevant part, requires that the claimant prove by a preponderance of the evidence that he sustained an accidental injury as a result of a specific incident identifiable by time and place of occurrence, which caused internal or external harm, arose out of and in the course of his employment, and which either required medical services or resulted in disability or death. Thus, in order to prove a compensable injury, the claimant must prove among other things, a causal relationship exists between the injury and the employment. McMillan v. U.S. Motors, 59 Ark. App. 85, 953 S.W.2d 907 (1997).

In the present case, there is no question that the claimant fell at work on the evening of June 13, 2003. There is no doubt in this case that the claimant was injured due to this fall by sustaining a contusion to the back of his head. The only questions are whether the claimant's injury "arose out of and in the course of his employment," whether it was personal to him (idiopathic), or whether it was an "unexplained injury." The claimant says he does not know what caused his fall. The weather outside was warm, but not hot, and the claimant stated that he had not become overheated while cooking prior to going outside. The claimant stated that one minute he was feeling fine, and the next thing he knew he was waking up in the emergency room. The claimant suffers from no known debilitating health issues, i.e., seizures, he had no previous history of fainting, nor has he had such an episode since this incident. Based upon the above and foregoing, the Administrative Law Judge found that the claimant suffered an "unexplained injury" which he found to be compensable. See, Little Rock Convention and Visitors Bureau v. David Pack, 60 Ark. App. 82, 959 S.W.2d 415 (1997); See also, Moore v. Darling Store Fixtures, 22 Ark. App. 21, 732 S.W.2d 496 (1987). In my opinion, the evidence does not support this conclusion for the following reasons. First, although the claimant testified during his hearing that he had "probably worked around the house all

day" on the day prior to his accident, the emergency room record reveals that the claimant reported having been "[o]ut in the sun all day" on the previous day. Furthermore, the claimant admitted that there is "nothing hard about breaking down boxes," and, therefore, he does not claim that he was engaged in an extremely physically demanding or in a risky task at the time of his fall. Moreover, the claimant admitted that he had not eaten anything after his noontime meal that day.

In section 7.04(a)&(b) of his treatise on workers' compensation, Larsen describes an unexplained fall, which he categorizes as being "neutral" in terms of risk, as one for which there is no "discoverable reason." Id. Compensation in such a case is awarded on "but-for" reasoning which satisfies the "arising" requirement of Ark. Code Ann. §11-9-102. According to Larsen, unexplained fall cases are easily confused with "cases in which there was at least some possibility of a personal or idiopathic factor contributing to the fall." Id. "Whenever personal disease or weakness contributes to a fall," explains Larsen, "an entirely new set of rules comes into play, since the risk [of injury] is no longer neutral but either personal or ... mixed." Id. The burden of proof is on the claimant to show 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. (Emphasis added) Supra, 22 Ark. App. 21, 732 S.W. 2d 496 (1987). Moreover, in order for an injury to arise out of the employment, it must be a natural and 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).

Unlike an unexplained injury, an "idiopathic" injury is generally not compensable because it is personal in nature and therefore does not arise out of or in the course of employment. See, generally, ERC Contractor Yard & Sales v. Robertson, 335 Ark. 63, 977 S.W.2d 212 (1998; Little Rock Convention and Visitors Bureau v. Pack, 60 Ark. App. 82, 959 S.W.2d 415 (1997)). In the recent case of Harrison v. Mr. Burger of Ark. Inc., Full Commission Opinion filed November 17, 2003, (Claim No. F208765), the Commission found that the claimant, a 16-year-old who suffered a syncopal event while at work in a restaurant, sustained a non-compensable idiopathic fall. The Commission based its decision, in part, on the fact that there was nothing about the work environment, i.e., excessive heat, which might have precipitated the claimant's fall. Moreover, due to recent dental work the claimant had "missed meals" which her neurologist, namely Dr. Morse, stated could have contributed to her syncopal event.

The weight of the credible evidence in this case indicates that it is more likely than not that the claimant's fall on June 22, 2002, was personal to him in nature. Specifically, there is nothing environmental that can be attributed to his event, and the claimant had not eaten for several hours prior to his fall. In a letter to respondents's counsel dated March 10, 2004, Dr. Morse stated:

In a young, otherwise healthy individual of this age, syncope, most likely is cardiovascular most likely vasovagal in nature which in this gentleman's case is felt to be secondary to being overheated. He was in an enclosed space doing work in a hot environment.

Although Dr. Morse made the above statement within a reasonable degree of medical certainty, he was obviously unaware that the claimant was outside in moderate temperature at the time of his incident. Furthermore, the claimant had been cooking in an air conditioned environment prior to going outside.

Based upon the above and foregoing, I find that the claimant has failed to prove by a preponderance of the credible evidence that he sustained an unexplained fall on June 12, 2003, which was within the course and scope of his employment. Although limited, there are personal factors which clearly contributed to the claimant's syncopal event and subsequent injury. Specifically, the claimant had been

out in the sun all day the day before, and he had not eaten for quite some time prior to his episode. Thus, there is "at least some possibility of a personal or idiopathic factor" contributing to the claimant's fall, which makes his event clearly idiopathic rather than unexplained. Furthermore, because an idiopathic fall is not related to employment, it is generally not compensable unless conditions related to employment contribute to the risk by placing the employee in a position which increases the dangerous effect of the fall. The record does not show that the claimant's conditions of employment contributed to the risk by placing the claimant in a position which increased the dangerous effect of his fall.

In conclusion, I find that the preponderance of the evidence in this claim indicates that the claimant's syncopal event arose from a personal origin, and that he sustained an idiopathic fall on June 13, 2003.

Therefore, I must respectfully dissent from the majority opinion.

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KAREN H. MCKINNEY, Commissioner