

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F310422

KENNETH BARKER, EMPLOYEE	CLAIMANT
MORRELL MANUFACTURING, EMPLOYER	RESPONDENT
AIG CLAIM SERVICES, INC., CARRIER	RESPONDENT

OPINION FILED NOVEMBER 8, 2005

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

Claimant represented by HONORABLE EDDIE WALKER, JR., Attorney at Law, Fort Smith, Arkansas.

Respondent represented by HONORABLE CAROL L. WORLEY, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The respondents appeal a decision of the Administrative Law Judge filed on February 23, 2005, finding, in relevant part, that the claimant has proven by a preponderance of the evidence that he sustained a compensable injury when he fell at the respondent employer's place of business on September 15, 2003. Based upon her finding of compensability, the Administrative Law Judge awarded the claimant temporary total disability benefits from September 15, 2003, to a date yet to be determined.

Respondent No. 2 contends that the greater weight of the evidence clearly indicates that the claimant's fall was idiopathic in nature, resulting from a syncopal episode or some other type of neurological event.

The claimant alleges that he sustained a compensable injury that is governed by the Arkansas Workers' Compensation Act, A.C.A. § 11-9-101 et seq. The claimant's alleged injury is, indeed, an injury that is covered by the Act; however, the claimant has failed to establish the elements necessary to prove a compensable injury by a preponderance of the evidence. Our carefully conducted de novo review of the claim in its entirety reveals that the claimant has failed to prove by a preponderance of the evidence that his fall on September 15, 2003, was compensable. Instead, the evidence preponderates in favor of the claimant's fall having resulted from some type of seizure activity brought about by a head injury sustained by the claimant in 1997. Therefore, the claimant's fall was idiopathic and this claim is hereby be denied in its entirety.

The claimant testified that on the morning of September 15, 2003, he tripped over a broom covered with trash and fell on a smooth concrete floor. It was the claimant's second day on the job with the respondent employer when this incident allegedly occurred. The claimant further testified that he was knocked unconscious from the fall. The claimant stated that his supervisor, Tyrell Edwards, was standing over him when he awoke. Mr. Edwards assisted the claimant to the nurse's office where he received first-aid treatment. The claimant then drove himself to Dr. Gordon Sasser's office. In his report of that visit, Dr. Sasser stated that the claimant had a history of seizure activity. Due to the claimant's "significant concussion," Dr. Sasser referred him by ambulance to the emergency room of Sparks Regional Medical Center. Although not specifically cited in Dr. Sasser's initial report, the claimant testified that he had a seizure during his examination by Dr. Sasser. Likewise, the claimant testified that he had a seizure in the ambulance on the way to the emergency room for which he claims he was given "a Valium."

The emergency room report confirms that the claimant had "multiple observed seizures" while at the emergency room. A CT scan taken of the claimant's head while he was at the emergency room was normal. Other than his concussion, the claimant sustained only minor contusions from his fall, primarily to his lip, gums, and left knee.

During the hearing, the claimant admitted and the medical record confirms, that he began having seizures in 1997 when he was 17 years old. The claimant's original seizure activity resulted from him having been struck in the back of his head by a lead iron pipe. The claimant was 24 years old at the time of the incident of September 15th. The claimant testified that he had not seized for more than a year prior to the incident of September 15, 2003. The medical record reveals that on May 13, 2002, the claimant was seen by Dr. Janice M. Keating at Cooper Clinic Neurology. In her report of that examination, Dr. Keating stated:

HISTORY OF PRESENT ILLNESS: The patient is a 23-year-old with a recent diagnosis of hepatitis C followed by Dr. Bob

Miller. He also carries a history of seizure disorder. The main reason he comes in today is because of increasing headaches. ... The patient carries a history of seizures. He says that this was diagnosed about five years ago. He says that he does not have any aura or warning prior to the seizures.

IMPRESSION:

2. History of what sounds like primary generalized seizures. Etiology is unknown. By history Dilantin itself was not controlling his seizures.

Dr. Keating prescribed the claimant a new seizure medication and restricted his driving for one year. Further, Dr. Keating ordered an MRI of the claimant's brain, which was performed on May 15, 2002, and which showed normal results. In October of 2002, the claimant returned to Dr. Keating and informed her that he was seeking a medical release in order to join the military. The claimant denied having had any seizure activity for nearly a year, which Dr. Keating calculated to have literally been around eight months. The claimant admitted to Dr. Keating that he had not been taking his seizure medication as prescribed. Dr. Keating diagnosed the claimant with episodic migraine

headaches and anxiety disorder with insomnia for which she prescribed Neurontin.

The respondent contends that the claimant's fall on September 15, 2003, was idiopathic, and therefore, not compensable. An idiopathic fall is one whose cause is personal in nature, or peculiar to the individual. ERC Contractor Yard & Sales v. Robertson, 335 Ark. 63, 977 S.W.2d 212 (1998). 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. Id. Clearly, the medical record demonstrates that the claimant had an established history of seizure activity prior to his fall of September 15, 2003. None-the-less, the claimant maintains that his fall was due to tripping over a debris-hidden broom. Witness testimony, however, contradicts the claimant's story and reveals that the claimant's fall was idiopathic. For example, Dwight Sayre, who is a safety manager and assistant general manager for the respondent

employer, testified that he saw the claimant shortly after his fall. Mr. Sayre denied that the claimant told him he had tripped over a broom. Mr. Sayre further denied having observed any injury to the back of the claimant's head, that the claimant never indicated to him that he was dizzy, or that he had any knowledge as to whether the claimant ever lost consciousness. Mr. Sayre stated that when he asked the claimant if he needed someone to drive him to the doctor's office, the claimant indicated that he could drive himself.

Next, Tyrell Edwards, the claimant's supervisor, testified concerning the events of September 15, 2003.

Mr. Edwards stated:

A. We were just getting ready to start work. Kenneth [the claimant] headed towards over there. I was behind him from the other side and he fell. I didn't really - - I didn't see him trip over anything. And when I went over there, his face was bleeding, like, right around here (pointing at mouth) like he hadn't - - it looked like he just hit his face like right here (pointing at mouth), like no other part. I asked him if he was all right and he said he was and I went and got Dwight.

Q. How quickly were you able to get over there?

A. I was there, like, right when it happened.

Q. To your knowledge was he knocked out or did he get knocked out as a result of the fall?

A. No. He was fine. He got up and said he was all right.

Q. And then he walked away?

A. Yes.

Mr. Edwards denied having seen a broom handle or anything that the claimant could have tripped over in the area where the claimant had fallen. Mr. Edwards further denied having witnessed the claimant stumble prior to his fall. Mr. Edwards testified that the claimant was carrying a bundle of bags when he fell, but he could not recall whether the bags flew out of the claimant's hands or whether he fell with them. Mr. Edwards testified that he did not ask the claimant what had happened, only whether or not he was okay, to which the claimant responded that he was. Finally,

Mr. Edwards denied having witnessed the claimant hit the back of his head.

The claimant's testimony contradicted that of Mr. Edwards in the following ways. First, the claimant testified that he hit the back of his head when he fell.

The back of my head hit the concrete prior to the - - See, what had happened was Tyrell - - Mr. Edwards had instructed me to get my workstation ready. I walked over to where the product was for part of the products, grabbed a box, stepped off the pallet and was walking back to my workstation when I tripped over a broken broom covered in pre-used material, and I was falling I pulled the box - - I was holding the box and it came up to my face because I was stumbling trying to catch my step and it busted my mouth open and shoved my tooth in my lip and as I was falling I fell to the corner - - at first hit the corner of the box into my temple (pointing on right temple) and then fell - - and then completed with the fall with a smack to the back of my head.

Dr. Sasser's medical report from the day of the claimant's incident indicates that the claimant demonstrated tenderness on the left side of his head. Moreover, the

claimant complained to Dr. Sasser about "his brain 'burning' along with injury to the left upper lip and teeth and left knee." Further, a report from Crawford Memorial Hospital dated September 17, 2003, indicates injuries observed only to the claimant's face. On cross-examination, the claimant was asked to explain how he came to hit the back of his head and sustained left-sided injuries when he had previously described, in great detail, having sustained an injury to his right temple. The claimant responded:

A. No, ma-am. As I'm falling forward I rolled (indicating) after I had hit - - the corner of the box hit my temple (pointing to right temple) because I was trying not to hit the floor.

Q. The corner of the box hit your right temple?

A. I don't remember which side it was.
... .

Later, upon re-direct, the claimant stated:

Q. Now, where is it that the box hit you?

A. The box hit me close to - - between this area here (pointing on left temple).

As seen above, the claimant testified that he rolled as he fell, eventually landing on the back of his head, thus sustaining an injury to the back of his head. This testimony contradicts the claimant's earlier testimony that he had "smacked" the back of his head when he fell.

The claimant testified that he has been having seizures and headaches on a fairly regular basis since his alleged injury of September 15, 2003. Medical reports from Dr. William Griggs confirm that the claimant made these complaints. In a report dated July 26, 2004, Dr. Griggs stated:

Kenneth Barker came to see me originally after his blackout that occurred at work on 9/17/03. He told me that he tripped on a broom, fell, struck the left temple region on a box in (sic) the back of his head on the floor, and had a seizure at that time. He had several subsequent seizures in the emergency room. He was given dilantin 100 mg three time a day at that time.

However, after describing the claimant's onset of seizure activity and initial treatment, Dr. Griggs further stated:

My own experience with Kenneth has been one in which he has been noncompliant. He has not taken his medications. He said he could not afford them. We tried to get his medications free for him through a program provided by the drug companies, but he refused to bring in his financial data so that we could do that. He had another seizure while at work 7/23/04, and had zero anticonvulsants in his blood stream.

Dr. Griggs could not state conclusively whether or not the claimant was having seizures prior to his incident of September 15, 2003. Dr. Griggs confirmed, however, that the claimant had a pre-existing seizure disorder that could have triggered the events of September 15th.

The preponderance of the evidence reveals that the claimant has failed to prove that he sustained a compensable fall on September 15, 2003. The claimant and his mother, Ms. Sandra Barker, testified that he sustained a blow to the back of his head at age 17, which resulted in seizure

activity. The medical records confirm that the claimant was being treated for seizure activity as currently as May of 2002, with medication that the claimant admits he was not taking as prescribed. The only eyewitness to the claimant's fall denied that the claimant stumbled or tripped over debris, and he denied that the claimant ever lost consciousness. Questions concerning the credibility of witnesses and the weight to be given to their testimony are within the exclusive province of the Commission. White v. Gregg Agricultural Ent., 72 Ark. App 309, 37 S.W.3d 649 (2001). When there are contradictions in the evidence, it is within the Commission's province to reconcile conflicting evidence and to determine the true facts. Id. The Commission is not required to believe the testimony of the claimant or any other witness, but may accept and translate into findings of fact only those portions of the testimony that it deems worthy of belief. Id. The claimant contradicted himself in testimony concerning his fall, i.e., by first stating he injured his right temple, then revising his statement to say it was his left temple. Furthermore, the

medical evidence contradicts the claimant's testimony that he sustained injuries to the back of his head when he fell. The claimant presented incredulous testimony of rolling in the process of falling so as to explain that he landed on the concrete floor striking the back of his head. When this testimony is compared with the medical records contemporaneous with the claimant's fall, the testimony is simply too far fetched to be believed. In an effort to explain a rolling and falling backwards scenario, the claimant has failed to account for his initial left knee injury, or explain how bumping into a box with his face accounted for the severe injuries to his upper lip and face. Simply stated, no medical proof is presented in this claim that the claimant re-injured the back of his head at the time of his fall, resulting in a new onset of seizure activity, as he now claims. Based upon contradictions between the claimant's statements and witness statements and the medical record, we find that the claimant's testimony is not reliable and should not be given weight. Moreover, the claimant asserts that he was seizure free for an extended

period prior to his event of September 15, 2003. However, the claimant has failed to introduce sufficient evidence in this claim to indicate that his seizure activity had completely subsided prior to his fall. Dr. Griggs stated that the claimant is currently noncompliant concerning his seizure medications, which results in him having "fairly frequent seizural bursts." Therefore, the fact that the claimant did not take his seizure medication as prescribed prior to the event of September 15, 2003, strongly supports a finding that his fall, otherwise uncorroborated as being the result of him having stumbled on a broom, was seizure related. Based upon the medical records and the testimony of eyewitness, Tyrell Edwards, who appears to be a credible witness, it is more likely than not that the claimant's fall was caused by a seizure. Therefore, the claimant's fall of September 15, 2003, is not compensable and this claim is denied and dismissed in its entirety.

Even if we were to find that the claimant's fall is not idiopathic, a finding which we specifically do not make, the record is devoid of evidence indicating that the

claimant's current medical problems and current disability are causally connected to the claimant's fall. All evidence indicates that the claimant suffered a front-on fall with his areas of injury being confined to his facial region and his left knee. Moreover, even Dr. Griggs has indicated that he cannot conclusively relate the claimant's current medical problems to the incident of September 15, 2003. More specifically, Dr. Griggs stated in his letter of July 26, 2004, "I really do not know, ..., what the cause of his convulsions are."

Based upon the above and foregoing, the claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury as a result of a work related fall on September 15, 2003. Rather, the preponderance of the evidence reveals that the claimant's fall, which resulted in injuries to the claimant's lips, gums, and left knee, was idiopathic, and therefore, not compensable. Accordingly, the decision of the Administrative Law Judge is hereby reversed and this claim is denied and dismissed.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Turner dissents.

DISSENTING OPINION

The Majority is reversing an Administrative Law Judge and denying this claim. The denial is based on the Majority's finding that the claimant's September 15, 2003 fall at his place of employment was caused by a fainting spell or syncopal episode and is not related to his employment. In my opinion, this finding is based on little more than impermissible speculation and conjecture. For that reason, I dissent from the Majority's Opinion.

There is no dispute that the claimant had been suffering from a seizure disorder since a head injury in 1997. However, the claimant had successfully controlled this

condition with medication and, at the time of his 2003 injury, had been seizure free for over a year. At the time of his fall, the claimant had only been employed for two days. He testified that he was walking to his duty station when he tripped over a broken broom handle that was in some other debris on the floor and fell, striking his face and head.

The respondent rebutted this testimony by calling Tyrell Edwards, the claimant's immediate supervisor. Mr. Edwards testified that he had seen the fall "out of the corner of his eye" and that the claimant did not tell him that he had tripped when he fell. However, I do not find Mr. Edwards' testimony as being particularly persuasive. In the first place, Mr. Edwards stated that the claimant was carrying a bag or bags in his hands when he fell. However, Mr. Edwards was not able to testify to what happened to this package when the claimant fell. Mr. Edwards also, when asked whether he was actually watching the claimant when the fall happened, testified that he "he watched everybody" and that he generally supervised ten to twelve other employees.

Eventually, Mr. Edward admitted that he was not directly watching the claimant when the accident occurred. Also, I find it significant that Mr. Edwards testimony corroborated the claimant's testimony in regard to the clutter on the floor of the respondent's facility. Mr. Edwards testified that he did no accident scene investigation to determine if there was any debris which the claimant could have tripped on but he did state, "there is always material laying everywhere. I mean nobody is running. We all walk around, you just have got to watch what you are doing."

I also believe that it is highly significant that the accident history the claimant gave to his physician has been entirely consistent with his testimony at the hearing. On the date the accident happened, the claimant was seen by Dr. Gordon Sasser, a general practitioner in Alma, Arkansas. In his office note of September 15, 2003, Dr. Sasser recorded the following history:

"The patient presents with trauma. He was working at Morrell's and apparently tripped over a broom striking the left side of his head. He said that he lost consciousness for perhaps up to one

minute. The patient was complaining about his brain "burning" along with injury to the left upper lip and teeth and left knee. The patient has a history of seizure disorder since he was a child and has been on Dilantin but has not had any reoccurrence of seizures by his history and doesn't think that this was related to his seizure activity at this time. The patient was able to drive himself to the office where he was seen as an urgent walk-in."

Likewise when the claimant saw Dr. William Griggs, a Fort Smith neurologist on October 21, 2003, he provided a history of having tripped on a broom, falling, and striking his left temporal region on a box he was carrying. Once again, this is entirely in line with his testimony provided at the hearing.

After the claimant's 2003 fall, his seizure disorder returned and the claimant once again began having seizures on a frequent basis. Additionally, the medical records also document the claimant as having a migraine headache condition that had significantly worsened since 2003.

I find the claimant's testimony as to how he was injured credible for a number of reasons. First, his version of tripping over a broom was repeated in a contemporaneous statement given to Dr. Sasser on the date of the injury. In that statement, he specifically advised Dr. Sasser that he did not believe the seizure disorder caused him to trip and fall. The claimant provided nearly the exact same statement to Dr. Griggs less than one month later. I find it significant that, at the time he saw Dr. Sasser, the claimant would have had no reason to lie about this incident. The immediate injuries from the fall were merely superficial cuts to his face and knee. The severe effect of the fall, the reoccurrence of the claimant's seizure disorder, did not become evident until after the claimant had been examined by Dr. Griggs.

Secondly, the claimant had been seizure free for a substantial period of time following his injury. There is no medical reason to suggest that it would have reoccurred on the date in question. Further, the claimant testified that following a seizure, he was "out of it" for an extended

period of time. For example, the claimant suffered a seizure at the doctor's office and was transported to the hospital. The claimant did not have any awareness again until he woke up two days later. It seems highly unlikely that the claimant would have had a seizure or fainting spell, causing him to heavily strike his face on a concrete floor, and then be able to get up and go to the office of the respondent's safety director and then drive himself to the doctor's office. This post injury conduct simply does not seem to be in accordance with the type of seizures suffered by the claimant.

The testimony of Mr. Edwards also supports the claimant's credibility in that he stated that there was material "lying everywhere." Even though Mr. Edwards did not see the broomstick the claimant described, given Mr. Edwards' testimony about the clutter present on the floor and about having to "watch what you are doing" when you are walking certainly suggests that the claimant's fall could have happened just as he described it.

In short, I do not see any evidence in the record that contradicts the claimant's testimony as to how he was injured. In my opinion the Majority is speculating that because the claimant had a preexisting seizure disorder, the seizure disorder caused him to fall. However, the Workers' Compensation Act specifically forbids us from relying upon that type of speculation to reach a decision. I believe that the Administrative Law Judge who conducted the trial in this matter and observed the demeanor and conduct of the witnesses was entirely correct in finding the claimant to be a credible witness and that his testimony was sufficient to establish the occurrence of a compensable injury. For that reason, I dissent from the Majority's Opinion and find that the claimant did establish a compensable injury and is entitled to all appropriate benefits.

SHELBY W. TURNER, Commissioner