

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F211398

ALBERT M. BENDER,
EMPLOYEE

CLAIMANT

CITY OF STRONG,
EMPLOYER

RESPONDENT

ARKANSAS MUNICIPAL LEAGUE
WORKERS' COMPENSATION TRUST,
INSURANCE CARRIER

RESPONDENT

OPINION FILED DECEMBER 15, 2005

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

Claimant represented by the HONORABLE NORWOOD PHILLIPS,
Attorney at Law, El Dorado, Arkansas.

Respondents represented by the HONORABLE J. CHRIS BRADLEY,
Attorney at Law, North Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The respondents appeal an administrative law judge's opinion filed February 8, 2005. The administrative law judge found, "Claimant's April 11, 2002, injury was the major cause of his physical harm, in relation to other factors; specifically, claimant has shown that he injured his leg while performing extraordinary and unusual work duties, the necessary exertion of which precipitated his

injury and subsequent treatment and disability." After reviewing the entire record *de novo*, the Full Commission reverses the opinion of the administrative law judge. We find that the claimant did not prove he sustained a compensable injury pursuant to Ark. Code Ann. §11-9-114.

I. HISTORY

Albert Bender, age 58, testified that he became Water Superintendent for the City of Strong, Ark. in about 1972. Mr. Bender's testimony indicated that this position entailed shoveling, bending, and lifting heavy weights. The claimant's testimony indicated that he developed a "vascular situation" involving his lower extremities in the late 1990's. The final impression from a Color Venous Doppler in May 1996 was "Deep vein thrombosis of the superficial femoral segment of the deep venous system of the right leg is very likely. Clinical correlation is recommended." The impression from a Lower Arterial study in May 1996 was "1. Severe stenosis or occlusion of the superficial femoral artery right lower extremity may be present. Moderate ischemia right foot is likely. 2. Study can be considered normal on the left lower extremity."

The claimant underwent surgery in May 1997: "1. Right ilio to right femoral to right supragenicular popliteal arterial bypass grafting utilizing 6 mm. Gortex conduit. 2. Extensive endarterectomy and patch angioplasty of right iliac and common femoral arteries." The postoperative diagnosis was "1. Severe peripheral vascular disease, right lower extremity. 2. Disabling claudication, right lower extremity." (Dorland's Illustrated Medical Dictionary, 28th Ed., defines "vascular" as "pertaining to vessels, particularly blood vessels, or indicative of a copious blood supply." Dorland's defines "claudication" as "limping or lameness.")

The claimant testified that he returned to work after the 1997 surgery. The claimant testified that his right leg began hurting after working in a deep hole, and that this incident led to another surgery. In September 1998, Dr. C.D. Williams performed a "reoperative right femoral-popliteal bypass using saphenous vein graft." The post-operative diagnosis was "ischemic right leg with claudication." Dr. Williams also entered a final diagnosis in September 1998 of "Peripheral vascular disease with claudication of both legs." Dr. Williams wrote in September

1998, "Due to his condition, I have advised Mr. Bender to take care of his legs. He can no longer do ditch work which he has been performing."

The claimant testified that when he returned to work, "originally it was light duty and then it ended up doing the same thing....We couldn't keep help." The claimant testified that in addition to reading meters and repairing lines, he lifted, widened, and set culverts, and he shoveled gravel. The claimant credibly described his labor as full-time, heavy work.

Dr. Williams wrote on December 16, 1999, "Due to medical conditions Albert Bender can not work in ditches, read meters or bend below the waist. He has severe peripheral vascular disease and has had his legs operated on several occasions. He is unable to perform the above duties."

The parties stipulated that the employment relationship existed on April 11, 2002. The claimant testified on direct examination:

Q. Now, tell me what happened on April 11, 2002. That is the date that you stated that you were injured.

A. We were setting a culvert. It was in a wet place cement driveway. I had dug the trench out

with a backhoe and then we had to fill it up with pea gravel to where the culvert would hold up, and then grade it out and all that. So we got it graded out with pea gravel and we were setting the culvert in the hole, it was long culvert, 18 foot culvert I think. I was on one end and my helper on the other, and we were taking grades on it and making sure it was level and all that. Well, the pea gravel, it was wet and boggy down at the end, muddy, and I was at the end of it, moving it around to get it lined up....

Q. And then what did you do?

A. When I started out of the ditch - when I raised up and then I started out of the ditch, I had to snatch my leg up and out of the gravel to get up on the bank....

Q. When you snatched your leg out of the mud, did you feel pain at that time?

A. Yes. When I snatched it up and started to step up on the bank, you know, to get out of the ditch, that's when it happened.

Q. And was your foot pretty much covered with mud and gravel at the time that you tried to pick it up out of the mud?

A. Yes. It was a rubber boot and it's hard to - my foot was wanting to come out of it.

Q. Where did the pain initially start?

A. Well, down my hip and went on down the back of my leg.

Q. Okay. And that was a sudden onset of pain at that time?

A. Yes....

Q. Did you think that you were injured at that time?

A. I thought I was, yes.

The claimant agreed on cross-examination that the incident involving the culvert was something he did as a part of his regular work. The claimant agreed that he performed this type of labor during different seasons and weather conditions. The respondents' attorney cross-examined the claimant:

Q. On that particular day you were working with, what was it, pea gravel?

A. Yes.

Q. And mud?

A. The ditch was muddy. We put pea gravel in - put a layer of it on the top of it to where our pipe would stand up, not using dry sand.

Q. Is that a normal process for laying a culvert or a pipe?

A. Most of the time you don't have to use pea gravel under it. Most of the time it is dry....

Q. On that particular day, you didn't stumble or fall, did you?

A. No.

Q. Didn't trip, anything like that?

A. No.

Q. The only unusual thing was that you felt pain in your leg?

A. Yes.

Q. You've had to climb out of ditches and culverts as a regular part of your job over the years with the City of Strong, haven't you?

A. Yes.

Q. All right. Have you also done concrete work for the City?

A. Yes.

Q. Have you gotten your feet in concrete?

A. Yes.

Q. So in the wide variety of duties that you had to do with the City of Strong, being in that kind of situation on that day was nothing unusual for you, was it?

A. No.

Noah Moses testified that he was the Mayor of the City of Strong and the claimant's supervisor at the time of the incident. Mr. Moses described the claimant's wet working conditions on the day of April 11, 2002 as "unusual." Mr. Moses testified that he observed the claimant "grimace" after pulling his foot out of the pea gravel and mud. The claimant testified that the incident occurred at approximately 11 a.m., and that he took the rest of the day off.

A progress note on April 15, 2002 indicated that the claimant was feeling pain in his legs which had happened while the claimant was digging out and replacing a culvert for a city road. The note also indicated that the claimant had been pouring and spreading concrete.

Dr. Kenneth Prather examined the claimant on April 15, 2002:

This patient presents today stating that he has been experiencing some difficulty with muscle pain in the lower extremities especially with physical exertion. The patient has a history of peripheral vascular disease and has undergone revascularization procedures on both lower extremities....

Examination reveals the skin on the lower extremities to be slightly cool to the touch. Pedal pulses are diminished in both feet. An attempt to identify a pulse with a small Doppler unit was also unsuccessful. There are well-healed surgical scars on the medial surfaces of both thighs as well as on the right popliteal area.

Dr. Prather assessed "1. Peripheral vascular disease.
2. Status post revascularization of the both lower extremities."

The claimant was seen at Little Rock Cardiology Clinic on June 13, 2002:

Mr. Bender has a history of atherosclerosis having had peripheral vascular revascularization on three separate occasions by Dr. C.D. Williams. He

had his coronary arteries checked back in 1999 and was found to have nonobstructive, nonocclusive disease. Mr. Bender presented to Dr. Williams' office for a routine follow-up with regard to his peripheral vascular disease in April and was noted to have occluded grafts bilaterally. The right graft had been patent in December of 1999 at the time of his last ultrasound. He underwent an aortogram with runoff with Dr. Murphy on May 8, 2002, and was found to have bilateral femoral popliteals with occluded superficial femoral arteries and returned on May 9, 2002, for a right popliteal stick for possible intervention. There was a subintimal wire perforation and the procedure was aborted on May 9, 2002. He returns now for re-attempt with a retrograde approach with a right popliteal stick for revascularization.

The assessment included: 1. Peripheral vascular disease. 2. Coronary atherosclerosis. 3. Chronic sinus trouble. 4. Hypertension. 5. Smoker. 6. Social alcohol consumption. The claimant was admitted to Little Rock Cardiology Clinic "for right retrograde approach with a right popliteal stick for superficial femoral artery intervention."

The record indicates that on September 10, 2002, the claimant underwent a "reoperative femoral-popliteal bypass using a saphenous vein graft by Dr. C.D. Williams." The discharge diagnosis was "Peripheral vascular disease with left leg claudication."

Dr. Prather noted on October 4, 2002:

The patient presents today for followup of his peripheral vascular disease. The patient has had long-standing difficulty with peripheral vascular disease involving both lower extremities. He has undergone several unsuccessful attempts of percutaneous treatment. He has most recently undergone a surgical revascularization of the right lower extremity. The patient states that he is now having claudication in the right lower extremity with ambulation beyond 100 feet....

Examination of the lower extremities reveals recent surgical scars extending along the medial side of both lower extremities. The right lower extremity is somewhat dusky in color. Posterior tibial and dorsalis pedis pulses are not palpable. The posterior tibial can be located with Doppler; however, the dorsalis pedis cannot.

Dr. Prather assessed, "Severe peripheral vascular disease with recent revascularization of the right lower extremity."

Dr. Bruce E. Murphy ordered a right lower extremity arterial duplex, which was taken on October 7, 2002 with the following impression: "Markedly abnormal ankle brachial index with ultrasound evidence of right femoral/popliteal graft occlusion. There may also be a seroma or small hematoma identified medially."

Dr. Murphy assessed the following after performing a cardiac catheterization on October 9, 2002: "Unsuccessful thrombolysis of a recently placed femoral-popliteal graft

that has totally occluded. I think this guy has failed surgical and percutaneous revascularizations on multiple occasions and is just going to have to live with what he has in his leg."

It was reported at Arkansas Heart Hospital on October 10, 2002:

He is a Water Department Manager for the City of Strong, Arkansas and pretty much works seven days a week. Mr. Bender has a history of atherosclerosis that is diffuse and involves his peripheral circulation as well as his coronary circulation. He has had revascularization surgically on three separate occasions by Dr. C.D. Williams. He had coronary angiography in 1999 with nonobstructive, nonocclusive disease and underwent an aortogram with run-off by Dr. Murphy 05/08/02. He was found to have peripheral vascular circulation and presented to the Arkansas Heart Hospital in May 2002 for right popliteal stick and possible intervention. There was a subintimal wire perforation and the procedure was aborted. He returned in June for another revascularization. Dr. Murphy was unable to obtain wire control at that time and noted that any peripheral vascular intervention was possible for his superficial femoral arteries. He continued follow-up with complaints of progressive claudication and had a reoperative femoral-popliteal bypass with a saphenous vein graft 09/10/02. He had been to Dr. Williams' office on the 09/26/02 for an ultrasound and everything was fine. Then, acutely, Wednesday, he had claudication. Friday he was pulseless in that left lower extremity and was transferred for further definitive care. Dr. Murphy will again look his (sic) peripheral vascular circulation and attempt intervention as indicated....

CONDITION ON DISCHARGE: Guarded with severe peripheral vascular disease, right greater than left.

Dr. Williams wrote on November 14, 2002, "Mr. Albert Bender had a right femoral-popliteal artery bypass graft in 1999. He was working on 04/11/02 in wet soil and felt pain and a pull in his right thigh. He continued to have pain in his right leg and notified our office. He was seen in our office and had an ultrasound of his graft. It was found to be occluded."

Dr. Prather noted on November 25, 2002, "This patient presents today for followup of his hypertension and severe peripheral vascular disease involving the lower extremities. The patient has undergone a number of invasive procedures on the lower extremities in an effort to restore adequate circulation. The patient has been advised that no further surgical or percutaneous procedures could be performed in an attempt to improve the circulation to his lower extremities. He continues to have difficulty with claudication with physical exertion."

Dr. Prather assessed, "1. Hypertension. 2. Severe peripheral vascular disease of the lower extremities with several surgical and percutaneous procedures performed in an

effort to restore circulation without success." Dr. Prather advised the claimant "that it would be in his best interest that he discontinue working and file for disability."

Dr. Prather stated on December 6, 2002:

Mr. Albert Bender was diagnosed with severe peripheral vascular disease involving both lower extremities beginning approximately 7 years ago. Since that time, he has undergone multiple surgical and percutaneous procedures in an attempt to restore adequate circulation to his lower extremities. Mr. Bender has attempted to continue working throughout this time. However, because of worsening of his condition as well as limited success and establishing adequate circulation, he has been advised that he should discontinue working. Currently Mr. Bender experiences severe pain in his lower extremities when attempting to walk even for short distances. It is expected that this condition will worsen with time. I have advised him to cease his work activities as soon as possible.

The parties agreed at hearing that the claimant was paid through December 15, 2002. The claimant testified that December 15, 2002 was his last day of work, and that no appropriate work for the respondent-employer was actually available, "because even though you was the supervisor, you still had to do manual work sometimes because a lot of times you was there by yourself on the weekends and stuff like that." The claimant essentially testified that he was

physically unable to perform the manual labor his position for the respondents required.

Dr. Williams wrote on January 22, 2003:

I am writing this letter to try to help expedite Mr. Albert Benders Worker's Compensation claim. I am enclosing letters that have been written in the past outlining the duties that Mr. Bender was no longer able to perform at work.

Mr. Bender has had multiple surgical and intervention procedures for peripheral vascular disease. Mr. Bender was instructed and letters were sent to his employer stating he could no longer do ditch work, read meters or bend below the waist. He needed to have other people perform these duties. Mr. Bender continued to perform the above jobs and occluded his bypass graft in the process. We tried to open the graft with a catheter and then operated on it when this failed. His surgery was not successful in restoring blood flow to his leg. We have advised Mr. Bender to quit work and try to save his leg. There are no other options for revascularizing his leg at this time. Mr. Bender's symptoms will continue to worsen over time.

A claims adjuster with the respondent-carrier provided a questionnaire to Dr. Murphy's office on March 25, 2003. Question No. 3 was "Should his current treatment needs be related to progressive vascular disease from his medical degenerative condition and not related to his work?" The word "Yes" was handwritten beside the question.

Dr. Williams wrote on April 21, 2003, "We have written several letters stating that Mr. Albert Bender's last

surgery was to try to repair a work related injury to his previous bypass graft. We sent letters to his employer after his first surgery listing the limitations Mr. Bender had to help save his leg. His employer still required Mr. Bender to perform these tasks and now he does not have proper blood flow to his leg and is at great risk of eventually losing his leg. His last interventions were not successful in restoring blood flow to his leg."

Dr. James Estes, a vascular surgeon, provided a Peer Review Analysis for the respondents on April 29, 2003:

REASON FOR REFERRAL:

1. Since both of the Mr. Bender's (sic) legs were occluded when he first sought medical treatment after 04/11/02, did the work he was doing that day cause the graft to become occluded, or could the pain he felt while working been (sic) because the graft was already occluded?
2. Please determine whether or not Mr. Bender's medical treatment from 04/11/2002 should be the responsibility of his worker's compensation carrier or his personal medical insurance....

RECOMMENDATION:

1. The graft occlusion most likely resulted from a technical problem and not due to physical activity at the time of symptom onset.
2. The claimant's problems with peripheral vascular disease which manifested from 04/11/2002 are not due to work-related injury and should be covered under personal medical insurance.

RATIONALE:

The claimant has an extensive history of symptomatic peripheral vascular disease and had already had several revascularization procedures on his lower extremities. There is also a history of previous graft failure. He has risk factors of former tobacco abuse and hypertension [unintelligible] establishing a severe pre-existing health condition.

The most likely cause for graft failure in the early postoperative period is a technical problem with the anastomoses or inferior conduit, which this claimant had. He may also have a hypercoagulation disorder, given his previous graft failures. Physical activity is an unlikely cause for graft failure.

This claimant had exacerbation of a pre-existing health condition that was not related to work activities.

CLINICAL SUMMARY:

This 56 year old male has an established history of severe peripheral vascular disease, having undergone several previous lower extremity arterial reconstructions. Risk factors were hypertension and smoking. He underwent graft revision in 09/2002 for claudication after failed attempts at percutaneous intervention of superficial femoral artery occlusion. The saphenous vein was poor at the knee and required segment excision with venovenostomy creation. A duplex scan one month later was normal. He presented 10 days after the duplex scan with sudden onset claudication that occurred while working outside and was found to have an occluded graft, which was not amenable to thrombolysis....

Dr. Williams wrote to the claimant's attorney on
December 4, 2003:

Mr. Albert Bender has been a patient of mine for years. My office has sent his medical records to

your office but I wanted to clarify some things for you. Mr. Bender was seen in my office on 04-17-02 after seeing his local physician. Mr. Bender stated that while working in a ditch he experienced pain in his right leg. He then had claudication after walking a short distance. His family doctor recommended we see him to follow up on his graft. The graft was found to be occluded on this visit. Mr. Bender's employer had been sent a letter by my office instructing them that Mr. Bender could no longer do ditch work or his graft would be at risk. I have every reason to believe that Mr. Bender lost his graft do (sic) to this incident. We did everything we could to revascularize Mr. Bender's right leg and failed. He is at risk of eventually losing his right leg. If Mr. Bender had been able to limit his job as we instructed his employer to do his graft might still be patent....

A pre-hearing order was filed on July 21, 2004. The claimant contended that he sustained a compensable vascular injury on April 11, 2002. The respondents controverted the claim. An administrative law judge found that the issues for litigation were: "1. Whether the claimant sustained a compensable vascular injury on April 11, 2002. 2. Whether the claimant is entitled to temporary total disability compensation."

The administrative law judge found, in pertinent part:

2. Claimant's April 11, 2002, injury was the major cause of his physical harm, in relation to other factors; specifically, claimant has shown that he injured his leg while performing extraordinary and unusual work duties, the

necessary exertion of which precipitated his injury and subsequent treatment and disability.

3. Claimant is entitled to treatment, both past and future, for complaints associated with his April 11, 2002, vascular injury.

4. Claimant is entitled to temporary total disability indemnity benefits commencing December 15, 2002, and continuing through a date yet to be determined.

The respondents appeal to the Full Commission.

II. ADJUDICATION

Ark. Code Ann. §11-9-114 provides:

(a) 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.

(b) (1) An injury or disease included in subsection (a) of this section shall not be deemed to be a compensable injury unless it is shown 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.

(2) Stress, physical or mental, shall not be considered in determining whether the employee or claimant has met his or her burden of proof.

In the present matter, the Full Commission finds that the claimant did not prove that a cardiovascular accident was the major cause of his physical harm. The claimant began working for the respondent-employer in about 1972.

Objective diagnostic testing in May 1996 showed thrombosis and an occlusion in the claimant's right leg. The claimant was assessed as having severe vascular disease in May 1997. The claimant underwent surgery in 1997. The claimant testified that he returned to work after surgery in 1997, and that his right leg began hurting after working in a deep hole. Dr. Williams subsequently performed additional surgery and diagnosed "peripheral vascular disease" in September 1998. The claimant eventually returned to full-time employment for the respondents, performing his regular work duties.

The claimant testified that he felt sudden pain after "snatching" his right leg out of pea gravel while working for the respondents on April 11, 2002. A progress note on April 15, 2002 did not closely corroborate the claimant's account of a specific incident on April 11, 2002, but the note did indicate that the claimant had been feeling bilateral leg pain after digging out and replacing a culvert. Also on April 15, 2002, Dr. Prather reported that the claimant was experiencing pain in his lower extremities after physical exertion; Dr. Prather did not report a work-related incident occurring on April 15, 2002. Dr. Prather

assessed "peripheral vascular disease," which condition had first been diagnosed in May 1997. Dr. Prather did not attribute the diagnosis of this condition to any sort of work-related specific incident.

It was noted at a Cardiology Clinic in June 2002 that the claimant had "a history of atherosclerosis having had peripheral vascular revascularization on three separate occasions by Dr. C.D. Williams." The claimant underwent another surgery, but there was no causal connection mentioned between the claimant's condition and a specific work-related incident. Dr. Prather assessed "severe vascular disease" in October 2002. Dr. Murphy, a cardiologist, subsequently performed a cardiac catheterization in October 2002 and concluded, "Unsuccessful thrombolysis of a recently placed femoral-popliteal graft that has totally occluded. I think this guy has failed surgical and percutaneous revascularizations on multiple occasions and is just going to have to live with what he has in his leg."

Dr. Prather stated in December 2002 that the claimant had been diagnosed "with severe peripheral vascular disease involving both lower extremities approximately 7 years ago."

Dr. Prather did not attribute claimant's condition to the April 11, 2002 event, nor did he state the April 11, 2002 incident aggravated the claimant's condition of severe peripheral vascular disease. In answering a questionnaire in March 2003, Dr. Murphy, a treating cardiologic specialist, opined that the claimant's need for treatment was related to the claimant's vascular disease, not the claimant's work.

The Full Commission is aware of Dr. Williams' letters in support of the claimant on January 22, 2003, April 21, 2003, and December 4, 2003. In the January 22, 2003 and April 21, 2003 correspondence, Dr. Williams attributed the claimant's condition to the claimant's work generally and not the April 11, 2002 incident. Dr. Williams opined on December 4, 2003 that he had found an "occlusion" on April 17, 2002, and that the claimant had "lost his graft" because of the April 11, 2002 event. The Commission's authority to resolve conflicting evidence also extends to medical testimony. Maverick Transp. v. Buzzard, 69 Ark. App. 128, 10 S.W.3d 467 (2000). In the present matter, although Dr. Williams stated that he had found an occlusion after the April 11, 2002 incident, we note that an occlusion had

already been reported in 1996. Further, the weight of medical evidence does not support Dr. Williams' conclusion that the claimant had "lost his graft" as a result of the April 11, 2002 incident. None of the extensive medical evidence we have discussed *supra* supports Dr. Williams' theory in this regard. In addition, the Full Commission attaches significant evidentiary weight to the Peer Review Analysis provided by Dr. James Estes on April 29, 2003. Dr. Estes, a vascular surgeon, expressly opined that the claimant's medical problems were not the result of an incident occurring on April 11, 2002. The Full Commission finds that Dr. Estes' opinion is corroborative of the opinions of Dr. Prather and Dr. Murphy, in addition to the other medical evidence, and is entitled to significant weight.

"Major cause" means more than fifty percent (50%) of the cause. Ark. Code Ann. §11-9-102(14)(A). Pursuant to Ark. Code Ann. §11-9-114(a), the Full Commission finds in the present matter that the claimant did not prove an accident was the major cause of his physical harm. In accordance with Ark. Code Ann. §11-9-114(b)(1), the claimant also did not prove that the work he was performing on April

11, 2002 was "extraordinary and unusual in comparison to the employee's usual work in the course of the employee's regular employment." The claimant also did not prove there was an "unusual and unpredicted incident" which was the major cause of the claimant's physical harm. The claimant testified that he "snatched" his leg out of gravel while building a culvert on April 11, 2002. The claimant testified that he felt immediate pain in his foot and leg. The record demonstrates, however, that the claimant had performed this type of manual labor since becoming employed with the respondents in 1972. The claimant testified that his work for the respondent-employer had always required shoveling, bending, and lifting heavy weights. The claimant agreed at hearing that the situation he encountered on April 11, 2002 was "nothing unusual" in the course of the claimant's employment.

The claimant therefore did not prove by a preponderance of the evidence that his work on April 11, 2002 was "extraordinary and unusual" in comparison to the claimant's usual work. Nor does the record show that the claimant encountered an "unusual and unpredicted" incident at work on April 11, 2002. See, Ulibarri v. Jim Wood Co., 79 Ark. App.

354, 87 S.W.3d 846 (2002). As in Ulibarri, the record in the present matter does not show that the exertion was too great for the claimant on April 11, 2002 such that the exertion led to the need for additional surgery and treatment.

Based on our *de novo* review of the entire record, the Full Commission finds that the claimant did not prove he sustained a compensable injury pursuant to Ark. Code Ann. §11-9-114. The Full Commission therefore reverses the decision of the administrative law judge, and this claim is denied and dismissed.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

KAREN H. McKINNEY, Commissioner

Commissioner Turner dissents.