

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F311307

CLIFTON L. CHILDERS (DECEASED), EMPLOYEE	CLAIMANT
STAFFMARK, LLC MIDWEST, EMPLOYER	RESPONDENT NO. 1
ALTANTIC MUTUAL INSURANCE, CARRIER	RESPONDENT NO. 1
MAYTAG CORPORATION, EMPLOYER	RESPONDENT NO. 2
SENTRY INSURANCE CO., CARRIER	RESPONDENT NO. 2
DEATH & PERMANENT TOTAL DISABILITY TRUST FUND	RESPONDENT NO. 3

OPINION FILED NOVEMBER 16, 2005

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

Claimant represented by HONORABLE BILL H. WALMSLEY, Attorney at Law, Batesville, Arkansas.

Respondent No. 1 represented by HONORABLE JOHN D. DAVIS, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 represented by HONORABLE JOSEPH H. PURVIS, Attorney at Law, Little Rock, Arkansas.

Respondent No. 3 represented by HONORABLE TERRY PENCE, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

The claimant appeals from a decision of the Administrative Law Judge filed March 3, 2005.

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

1. The stipulations agreed upon by the parties are reasonable and are approved.

2. Respondent #1 and Respondent #2 controvert this claim.

3. On October 14, 2003, Claimant sustained an injury in the parking lot of Maytag (Respondent #2); on October 23, 2003, Claimant died from this injury.

4. Claimant was survived by a minor child, Dale Taylor Huss.

5. Claimant's average weekly wage was \$426.92.

6. Claimant was a general employee of Respondent #1, and a special employee of Respondent #2.

7. I find that Claimant's October 14, 2003 injury was caused by horseplay, so that it is not compensable. Claimant's employment did not require him to sit on the side of a truck bed. Claimant and his fellow employees were "carrying on, talking, yelling" in the back of the truck; Claimant was laughing and joking as well. Despite being asked more than once to sit in the bed of the truck and having every opportunity to do so, Claimant released his hold on the side of the truck, folded his arms, and fell from the truck as it made a right turn. Under the law, this conduct constitutes horseplay.

8. Because Claimant's injury is not compensable under the statute, it is not necessary to discuss the remaining issues in this claim, including the requests for benefits and an attorney's fee.

We have carefully conducted a de novo review of the entire record herein and it is our opinion that the Administrative Law Judge's decision is supported by a preponderance of the credible evidence, correctly applies the law, 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.

Thus, we affirm and adopt the decision of the Administrative Law Judge, including all findings and conclusions therein, as the decision of the Full Commission on appeal.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Turner dissents.