

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F300739

JIMMIE L. KIMBRELL, EMPLOYEE

CLAIMANT

USA TRUCK, INC.,  
SELF-INSURED EMPLOYER

RESPONDENT

OPINION FILED JULY 7, 2005

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

Claimant represented by HONORABLE LAURA MCKINNON, Attorney at Law, Fayetteville, Arkansas.

Respondent represented by HONORABLE J. RODNEY MILLS, Attorney at Law, Fort Smith, Arkansas.

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The claimant appeals a decision of the Administrative Law Judge filed on July 19, 2004. Based on our de novo review of the entire record, we find that a preponderance of the credible evidence establishes that the claimant sustained a compensable heart attack on December 26, 2002. We further find that the claimant remained in his healing period and was unable to work from December 26,

2002 to March 24, 2003. Accordingly, we reverse the Administrative Law Judge's decision denying compensability of the claim and award the claimant medical and temporary total benefits.

The claimant is a 63 year old male with a seventh grade education and more than 40 years of work experience as a truck driver. On December 26, 2002, the claimant was operating an 18-wheeler tractor-trailer rig during the course of his employment with the respondent. The claimant testified he went to work early that particular morning before daylight. He backed his tractor under the trailer for the purpose of hooking the trailer to the tractor; however, due to the cold weather and ice, he experienced difficulty with getting the fifth wheel to latch. After pulling up and backing up a few times until he believed the trailer had been successfully hooked to the tractor, the claimant drove down the driveway and turned onto the public road. As he straightened the rig, the loaded trailer slipped off. The claimant immediately stopped the tractor, got out of the cab, and began trying to jack the trailer up high enough to back the tractor under the trailer, using a process referred to as "dollying" the trailer. In his

testimony, the claimant explained that dollies are the legs which are lowered to support the weight of the trailer when the trailer is "dropped". In contrast, the claimant explained that the legs remain up when the trailer is going down the road. The device used to crank the dollies is a handle with two different gear settings which can be adjusted based on the weight of the load and the amount of pressure needed. The claimant testified that typically the truck is backed up under the trailer causing it to lift up the loaded trailer and removing most of the weight of the trailer; thereby, making it easy to crank the legs up and down. The claimant explained that on the morning in question, he "was really exerting himself" because he was trying to lift the loaded trailer up by dollying up the legs "where I could get it out of the road, so there wouldn't be an accident around there". The claimant estimated that the weight of the loaded trailer was approximately 68,000 pounds. As the claimant attempted to jack the trailer back up, he would stop and get his wind and then try again until he finally got the trailer to where he thought he could get the tractor back under it. He testified that he did not know how long he worked to lift the trailer, but that he

eventually became winded, slowed down, and his chest began hurting. He described the pain, as follows:

Just a sharp pain going in there, I just thought it was just the cold air that I was breathing in and out, you know, that was what was causing it there at first, and I got in the truck and sat down and it didn't let up any, I got out and after a minute or two and the city police was there and I got out and told them, I think it was them that was there, I think it was the city police that was there, I told them, I said, I may need to call me an ambulance there, I think I need to go the to hospital.

He recalled being put in the ambulance, hooked up on IVs, and subsequently taking off and landing in a helicopter at Baptist Hospital in Little Rock.

Sherry Nelms, an employee of Villines Security in Harrison, was returning from her night duty station when she observed claimant's truck in the middle of the road blocking traffic with the trailer disconnected from the truck. She concluded that she must have arrived at the location just a few minutes after the incident occurred because the claimant was still in the truck. She testified that she had previously been a truck driver and upon arriving at the scene observed that the trailer had become disconnected from the fifth wheel on the truck and was nose down. She

directed traffic while observing the claimant trying to "dolly" the legs down on the trailer to raise it up so he could get the truck back underneath it. She testified that it was a little after 7:00 a.m. and about 17 degrees outside, with snow and ice on the ground. She stated that it was so cold that she experienced difficulty breathing as she worked to direct traffic. She explained that she was there "a good forty-five minutes" and observed the claimant as "very winded", "giving it everything he could" to dolly up the trailer. She observed that due to the weight of the trailer, it was "taking everything out of him". She described her observations of the claimant getting back into his truck, as follows:

It took him a minute to get up in the truck even and he laid back and started holding his chest and had trouble breathing and I asked him if he was alright and he really didn't respond . . . I got back in my patrol car and on my way back to the station I called Harrison Police Station and told them that there was a truck out on Industrial Park Road and it disconnected from it's trailer and I thought the man was possibly having a heart attack and that they needed to call an ambulance and which they did.

Upon arriving at the scene, the EMT administered a nitroglycerine pill to the claimant and transported him by

ambulance to the local hospital where he was diagnosed as being in the middle of a myocardial infarction. At the emergency room, the claimant was stabilized and transported by helicopter to Baptist Hospital in Little Rock, where he underwent an angioplasty and was successfully treated with the implantation of two stents. The stent procedure was performed by a specialist in invasive cardiology, Scott A. Davis, M.D. Afterwards, the claimant remained off work and under the treatment of Dr. Jack W. Hawk until he reached maximum medical improvement on March 24, 2003, at which time he returned to his regular job duties as a truck driver for the respondent.

When questioned about his medical history, the claimant testified that he was diagnosed with diabetes approximately five or six years prior to the hearing held in this case. He testified that since the diagnosis he had lost 20 pounds, took the necessary medication, kept his sugar under control, and tried to test his sugar level with a monitor every day. He testified he had experienced no chest pains prior to the date in question. He testified that he had no idea that he was at risk for a heart attack and believed that he was in good shape. He testified that

on Christmas Day, the day before the incident, he had outrun his young grandson in going up a big hill behind his house while playing in the snow. He testified that he had no problems loading or unloading his truck or crawling in or out of the cab prior to December 26. He testified that prior to the exertion of dollying up the trailer, he had no chest pain and was not winded nor had any prior history of being winded. He denied having been told that he had ever been diagnosed with hypertension prior to the heart attack. He testified that in the October immediately preceding the heart attack, he had a DOT physical and "everything checked out good".

The parties stipulated that the claimant's wife "would testify that the claimant had no heart symptoms prior to December 26, that his diabetes was controlled as far as she was aware and that he was in good physical health."

Dr. Hawk, whose primary emphasis is a general practice of medicine, testified that he had first seen the claimant on January 8, 2002, but that he had been a patient of the Harrison Family Practice Clinic since February 23, 2001. On January 8, 2002, the claimant was diagnosed with diabetes. At that time, the claimant's blood sugar was

running high, and he and Dr. Hawk had a lengthy discussion concerning, among other things, diabetes mellitus and obesity. He was given Amaryl, placed on the American Diabetic Association diet, and advised to get more exercise. Dr. Hawk testified that the records of the clinic reflected that the claimant was seen again on October 18, 2002, by Dr. Maris, who conducted another hemoglobin A1C test; however, the test results were not made a part of the record.

Dr. Hawk next saw the claimant on December 30, 2002, for follow-up after the heart surgery on December 26, 2002. Dr. Hawk testified that he had reviewed records of the clinic and could not find any record that the claimant had ever been diagnosed with hypertension prior to the heart attack. In a letter dated August 13, 2003, Dr. Hawk responded as follows:

Is this patient's work-related injury  
(heart attack while attempting to jack a  
trailer in 13° weather) the substantial  
contributing factor (51% or more) to his  
current disability?

        Yes        No

When questioned concerning the note, Dr. Hawk confirmed his opinion that the claimant's work-related activity caused the blockage in his heart. In his

deposition testimony and in response to questions from the claimant's attorney at the hearing, Dr. Hawk stated that it was his medical opinion within a reasonable degree of medical certainty that the sudden exertion by the claimant in jacking up his truck on the morning in question had precipitated the heart attack.

Dr. Scott Davis, a cardiologist, first treated the claimant on December 26, 2002, the first date of the onset of symptoms. Dr. Davis testified, by deposition, that the claimant was transferred to Baptist Medical Center and was immediately found to have a totally occluded right coronary artery segment, which was treated with balloon angioplasty and subsequent stenting of the lesion. On October 7, 2003, Dr. Davis signed a letter dated September 29, 2003, which stated:

Based upon objective medical findings and within a reasonable degree of medical certainty, it is my opinion that this patient sustained a work-related accidental injury on 12/26/2002. This injury was the major cause 51% or more of the patient's need for medical treatment and disability. Sincerely,  
Scott A. Davis, M.D., Attending  
Physician, Dated 10-7-2003.

It is undisputed that the claimant suffered a heart attack while engaged in work related activities. The

question presented is whether a work-related accident was the major cause of the physical harm and whether the exertion of the work the claimant was performing at the time of his myocardial infarction was "extraordinary" and/or "unusual" in comparison to his usual work in the regular course of his employment for the respondent.

In order to establish compensability for a heart or cardiovascular injury, the claimant must show that the work-related accident is the major cause of the heart or cardiovascular injury. Ark. Code Ann. § 11-9-114 (a) provides, in pertinent part,

a myocardial infarction causing injury, illness, or death is a compensable injury only if, in relation to their factors contributing to the physical harm, an accident is the major cause of the physical harm. Major cause is defined as "more than fifty percent (50%) of the cause A.C.A. § 11-9-102 (14) (A) .

A finding of major cause shall be established according to the preponderance of the evidence. A.C.A. § 11-9-102 (14) (B) .

The ALJ found that the claimant failed to prove by a preponderance of the evidence that his accident on December 26, 2002 was the major cause of his myocardial

infarction, as required by Ark Code Ann. § 11-9-114 (a). In so finding, the ALJ noted that it was "a close question".

In finding the claim non-compensable, the ALJ heavily relied upon the deposition testimony of Dr. Davis that the claimant's diabetes and hypertension were a major cause of the coronary artery disease. However, it is noteworthy that at his deposition, Dr. Davis testified that he was not aware of the particular details of the type of activity that the claimant was engaged in, other than "performing and executing his job duties as a truck driver". See, Williford v. City of North Little Rock, 62 Ark. App. 198, 969 S.W. 2d 687 (1998) (noting misplaced reliance on doctor which was unaware of specific activities engaged in by claimant).

In addition, the ALJ noted that the remaining testimony of Dr. Davis supported the proposition that the work activity "precipitated" the myocardial infarction but concluded that it did not satisfy the statutory definition of major cause. To support his conclusion, the ALJ pointed to a comparison of the decisions handed down by this Commission and the Court of Appeals in heart attack cases, as follows:

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Compare Huffy Serv. First v. Ledbetter, 76 Ark. App. 533, 69 S.W.3d. 449 (2002) (no evidence of pre-existing heart disease; holding for claimant); Williford v. City of North Little Rock, 62 Ark. App. 198, 969 S.W. 2d 687 (1998) (discounting prior history in light of doctor's emphatic statement concerning causation; holding for claimant); City of Blytheville v. McCormick, 56 Ark. App. 149, 939 S.W. 2d 855 (1997) (doctor testified that the accident was the major cause of the heart attack, with all other factors combined amounting to less than 10% by comparison; holding for claimant); Lovelace v. Dollarway School District, Full Workers' Compensation Commission Opinion filed March 3, 2004 (F106668) (finding claim compensable; claimant had no real history of heart problems, was not on medication, and was active); Compare with Stapleton v. DMT Services, Inc. Full Workers' Compensation Commission Opinion Filed February 4, 2000 (E807564) (evidence indicated that claimant's pre-existing cardiovascular condition was the major cause of the myocardial infarction; claim denied); Couch v. Arkansas State Police, Full Workers' Compensation Commission Opinion filed June 18, 1998 (E500890) (emotional stress and claimant's pre-existing coronary artery disease were the major cause of his myocardial infarction; claim denied); and Collins v City of Farmington, Full Workers' Compensation Commission Opinion filed July 16, 1998 (E605492) (claimant's heart was so far compromised by pre-existing disease that claimant was likely to experience a myocardial infarction at any time; claim denied).

From his review, the ALJ erroneously concluded

that in the absence of convincing medical proof to the contrary, the pre-existence of coronary artery disease or risk factors for heart attack generally makes it difficult for a claimant to prove that his accident is the major cause of his heart attack. On the contrary, there was evidence of risk factors and pre-existence of coronary artery disease in all of the heart attack cases cited above - both those that awarded benefits and those that did not. The case before us is more akin to those cases which resulted in determinations in favor of compensability and is equally distinguishable from those cases in which the Court or Commission concluded that the heart attack was not compensable.

In Williford v. City of North Little Rock, 62 Ark. App. 198, 969 S.W. 2d 687 (1998), the claimant, a 22-year veteran of the North Little Rock Fire Department, suffered a heart attack within 48 hours of performing the Firefighters Encounter And Agility Test (FEAT) on an extremely hot and humid day in July. The autopsy revealed several physical problems with the claimant's heart, including chronic pulmonary disease, hypertension, and chronic renal insufficiency, as well as noting the deceased claimant's history of insulin dependency. Id. at 202. In reversing

the Commission, the Court of Appeals noted that the following findings of the pathologist, Dr. Peretti:

In summary, this individual had evidence of severe pre-existing cardiovascular disease and a 20 year history of insulin dependent diabetes mellitus. He was undergoing rigorous physical exercise which was required to maintain his position as a North Little Rock Fireman. These exercises are responsible for putting excessive stress on his already compromised heart. It is my opinion based on reasonable medical certainty that he sustained his myocardial infarction during the physical workout . . . It is clear that the strenuous workout was the major cause in precipitating the myocardial infarction. Id. at 202-3.

Notwithstanding Williford's pre-existing physical condition, Dr. Peretti concluded that the strenuous workout was about a 95 to a 100% contributing factor to the heart attack. Id. at 203. In reaching this conclusion, Dr. Peretti cautioned that the whole situation should be put in perspective, noting that prior to the workout, Williford had no cardiovascular complaints, such as chest pains, and after undergoing all of the stress of the exercises, developed all of the symptoms. He further noted that the heart attack had occurred within 24 hours and prior to the workout, Williford was fine, walking around with no chest pains and no

complaints. Id. Based on this "persuasive" evidence, the Court of Appeals found that there was no substantial basis for the Commission's decision that the Williford's activity was not the major cause of his heart attack and reversed and remanded for an award of benefits. Id.

Similar to the Williford case, it is undisputed in the present case that the claimant was fine prior to the strenuous work-related activity required of him on the morning in question. He had no chest pains or cardiovascular complaints prior to the exertion on that morning. The claimant's heart attack occurred within 24 hours of the activity described. Although Kimbrell, like Williford, was diagnosed with diabetes and other risk factors, the doctors clearly agreed that it was the strenuous activity of trying to dolly up the trailer under extreme weather conditions that was a more than 50% contributing factor to Kimbrell's heart attack. Based on the preponderance of the evidence before this Commission in this case, the only conclusion that reasonable minds could reach is that the work activity was the major cause of the heart attack.

In City of Blytheville v. McCormick, 56 Ark. App.

149, 939 S.W. 2d 855 (1997), the Court of Appeals upheld the Commission decision to award benefits to the claimant who suffered his second heart attack while venting the roof of a burning building and being exposed to unusually heavy, dark, thick smoke. The claimant had suffered his first heart attack a year earlier, had successfully underwent bypass surgery, and returned to full duty seven months prior to the day in question. Id. at 153. The Court found that in light of the evidence that the claimant suffered a heart attack caused by and immediately following his exposure to smoke while ventilating the roof of the burning building, the Commission did not err in finding that an accident was the major cause of the appellee's heart attack. The Court further affirmed the Commission's finding that the medical evidence was sufficient to support a finding that the work incident was the major cause of the heart attack based on the testimony of the cardiologist that the exposure to smoke was the major cause, notwithstanding other contrary medical evidence. Id. at 155.

Likewise, while there is some medical evidence of the presence of other contributing factors which led to Kimbrell's heart attack, the medical testimony in this case

supports the conclusion that the work-related incident was the major cause of the heart attack. Moreover, the pre-existence of coronary artery disease or risk factors for heart attack did not "make it difficult" for McCormick to prove that his accident was the major cause of his heart attack. In fact, McCormick had previously suffered a heart attack, unlike the claimant here who had had no prior cardiac events. Under a similar analysis, the claimant here should not be so "conclusively" or "generally" barred in light of the credible medical evidence offered by Dr. Hawk and Dr. Davis.

Similarly, in Dollarway School District v. Lovelace \_\_\_ Ark. App. \_\_\_, \_\_\_ S.W. 3d \_\_\_ (2005), the Court of Appeals affirmed the Commission's award of benefits to the widow of a high school principal who suffered a fatal heart attack immediately following an altercation between students where the principal was involved in breaking up the fight. Lovelace was 41 years old and physically active with no prior history of heart problems, although there was a family history of heart failure and smoking. The only medical evidence offered was the deposition testimony of the emergency room physician, who was not a cardiologist. The

doctor had no personal knowledge of the deceased's physical health, habits, or history, and no autopsy was performed. The doctor testified that regardless of the exact mechanism that caused the myocardial infarction, whether it was triggered by blood chemicals setting up an irregular heart beat or because of pre-existing plaque that cracked and bled, he could state with a reasonable degree of medical certainty that the exertion expended by Lovelace during the altercation triggered the cardiac arrest. Id. The Court noted that the premise for recovery was that Lovelace's heart attack was "*precipitated*" (emphasis added) by his effort to stop the altercation between the two students. The Court went on to state that in order to prove a compensable injury, the appellee was required to show the exertion required of Lovelace was extraordinary or unusual compared with his usual work, or, that the altercation requiring the exertion was an unusual and unpredicted incident, and this exertion was found to have been the major cause of the physical harm. While observing that the Commission is not bound by a doctor's opinion based largely on facts related by a claimant, the Court noted that the onset of pains and the trip to the emergency room in close

temporal relationship between the work and the heart attack was other evidence which properly supported the Commission's decision.

Accordingly, in the case at bar, Kimbrell had no history of prior heart disease. He experienced an immediate onset of pain and was rushed to the emergency room and transported by helicopter for immediate medical treatment. Here, as in Lovelace, there was a close temporal relationship between the work activity and the heart attack. In addition, in the record before us, there are clearly objective medical opinions stated within a reasonable degree of medical certainty by doctors buttressed by witnesses with knowledge of the events on the day in question, as well as the medical history of the claimant, which clearly support the conclusion that the claimant's heart attack was triggered by the work-related incident.

Finally, the Court of Appeal's decision in Huffy Serv. First v. Ledbetter, 76 Ark. App. 533, 69 S.W.3d. 449 (2002) is also instructive. In this case, the Court concluded that the cardiologist's testimony, when combined with the fact that the employee had been working in extreme heat for seven or eight hours immediately preceding the

heart attack and was still working when the heart attack occurred, satisfied the requirement to show a specific incident identifiable by time and place leading to the heart attack. Ledbetter was employed as an assembler for lawn tractors, exercise equipment, grill, and similar equipment. In August of 1997, he suffered a heart attack while assembling lawn tractors in extreme heat conditions. Although a co-worker testified that Ledbetter had complained of chest pains the week prior to the incident, both his wife and daughter testified that he did not complain of chest pains nor display symptoms of heart trouble prior to his heart attack. The doctor testified that he had seen Ledbetter in 1994 due to chest pains. Although Ledbetter passed a stress test at that time, the doctor could not state for certain whether Ledbetter had a prior build-up of plaque, which was the cause of most heart attacks. *Id.* at 538. He testified that he was not aware of any prior cardiac problems and stated that it was more likely than not that Ledbetter's physical exertion on the day in question and "extreme exhaustion. . . precipitated (emphasis added) the event." *Id.* at 538-539. When asked if the physical exertion was more than 50% of the cause of the heart attack,

he responded, "Yes. I would say more likely than not." Id. at 539. The Court found that the doctor's opinion was stated within a reasonable degree of medical certainty, noting that the physical exhaustion was the precipitating event for the onset of the heart attack. Id. at 543. Relying on Williford, the Court further noted that even if the employee had a pre-existing heart condition, this would not preclude a finding that his work conditions were the major cause of his heart attack. Id. 543-544.

Similarly, Dr. Davis testified that the presence of coronary artery disease in Kimbrell was not diagnosed until the heart attack in issue and that it would be speculative to determine the length of time it had been present. The Ledbetter and Williford cases clearly stand for the proposition that even if the claimant in the instant case suffered from pre-existing coronary artery disease, this factor alone does not preclude a finding that the work activity was the major cause of the heart attack.

In the instant case, the ALJ acknowledged the medical testimony that the work activity was the "precipitating" factor of the heart attack, but held that the precipitating cause does not meet the statute's

requirement of "a major cause", relying on Collins v. City of Farmington, Full Compensation Commission Opinion filed July 16, 1998 (E605492). However, the instant case is clearly distinguishable from Collins.

In Collins, the employee last suffered a mild heart attack twenty years earlier, a triple-bypass eight years earlier, and two subsequent hospitalization admissions for chest pain and angina. As noted in the Opinion, the "claimant's condition was so far compromised that even the slightest exertion could induce the fatal results". Id. Moreover, Collins's cardiologist testified that 60% of the cause of the fatal heart attack was placed on claimant's pre-existing condition and 40% on the circumstances; clearly less than the 50% needed to satisfy the definition of major cause as defined in ACA §11-9-102 (14).

In the case at hand, the claimant had never suffered a previous heart attack. Moreover, the cardiologist and the treating physician both agreed that Kimbrell's work-related activity on the morning in question was a major cause (more than 50%) of the heart attack and need for treatment.

The ALJ also cited Stapleton v. DMT Services,

Inc., Full Workers' Compensation Commission Opinion filed February 4, 2000 (E807564), as support for denial of the claim. In Stapleton, the claimant suffered chest pains while unloading a truck after about one hour, presented to the hospital the next day, and was eventually diagnosed with a myocardial infarction. It was noted that the claimant had suffered two prior heart attacks, had recently been diagnosed with hypertension and medication noncompliance, and had chronic heavy nicotine usage. The Commission found that the preponderance of the evidence showed that the claimant's pre-existing cardiovascular condition was the major cause of the myocardial infarction. The evidence further reflected that the work activity that Stapleton was engaged in on the day in question was a normal requirement of his work as a truck driver. Relying on the testimony of the cardiologist that it was "doubtful" that the claimant's work activities constituted an extraordinary amount of exertion, the Commission found that the claimant failed to prove his heart attack was brought on by unusual or extraordinary circumstances.

In contrast, Kimbrell was engaged in strenuous work activity under extreme conditions that was not part of

his normal work duties. It should also be noted that the medical evidence offered by Stapleton clearly fell short of the evidence in the case at bar. In Stapleton, the cardiologist testified that in light of the claimant's medical history and risk factors, "the claimant could have suffered a heart attack while 'doing anything' or 'doing nothing'." In the instant case, while the medical evidence shows the presence of risk factors prior to the heart attack at issue, there was no medical evidence that the claimant had suffered from prior heart attacks or demonstrated any symptoms until the day in question.

In another case cited by the ALJ, the Commission rejected the claim for benefits from a 30 year veteran of the state police who experienced an heart attack after engaging in a high speed chase. Couch v. Arkansas State Police, Full Workers' Compensation Commission Opinion filed June 18, 1998 (E500890). The Commission found no evidence in the record that claimant's physical exertion or physical activity involved in a police chase was the major cause of the heart attack. Instead, the Commission observed that the preponderance of the evidence established that it was the claimant's emotional stress and pre-existing coronary artery

disease which was more than 50% the cause of the claimant's myocardial infarction.

In the instant case, there was credible medical evidence that the strenuous exertion by claimant in trying to "dolly" or jack up the loaded trailer under the circumstances was a major cause of the heart attack. Moreover, there were no percentage ratio comparisons provided by the medical evidence as to the risk factors and pre-existing coronary artery disease. Instead, the claimant's treating physician and cardiologist gave medical opinions within a reasonable degree of medical certainty that the work activity was the major cause (in excess of 50%) of his disability and need for medical treatment.

We further find that the preponderance of the evidence supports a finding that the second prong of the test has been met, in that the exertion of the work performed by the claimant at the time of the cardiac event was extraordinary and unusual. A.C. A. § 11-9-114 (b) (1) provides:

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 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.

The claimant testified that he could remember only one other time of having to "dolly up" a loaded trailer in his years as a truck driver. He testified that this activity was unusual and was not activity that could be predicted. He explained that he "didn't dream it would happen", since he was always careful to make sure that the trailer was hooked and locked in light of a prior similar experience. The claimant testified that he would occasionally help unload a trailer, but that the exertion required on the morning in question was extra-extraordinary for him. He testified that he did have to dolly the trailer on occasion when he was backing a truck under or driving away from a trailer, but in those instances the trailer would be raised a couple of inches as opposed to a couple of feet he attempted on the day in question. Although the ALJ failed to make a determination as to whether the nature of the work activity was extraordinary and unusual, it is clear from the evidence that the work activity of claimant on this particular day of trying to jack or dolly up a loaded

trailer of approximately 68,000 lbs in snow and icy conditions was a highly unusual and unpredictable "heroic effort" to safely clear a public thoroughfare with heavy traffic and was not the normal, expected job duties that claimant experienced in his forty - plus years as a truck driver. Clearly, this statutory prerequisite was met.

In conclusion, the evidence is clear that on the morning in question, the exertion of work by the claimant necessary to precipitate the heart attack was extraordinary and unusual in comparison to claimant's usual work in the course of his regular employment. The onset of symptoms and need for medical treatment was immediate. The objective medical evidence clearly supports a finding that the work activity was a major cause (more than 50%) of the physical harm. Therefore, we find that the claimant should be awarded reasonably necessary medical benefits and temporary total disability benefits for the time period established from December 26, 2002, until March 24, 2003.

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 (Repl. 2002). Death & Permanent Total Disability Trust Fund v. Brewer, 76 Ark. App. 348, 65 S.W.3d 463 (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).

The respondents are directed to pay benefits in accordance with the findings of fact set forth herein.

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 must respectfully dissent from the majority opinion finding that the claimant sustained a compensable heart attack on December 26, 2002. Based upon my de novo review of the entire record, I find that the claimant has

failed to meet his burden of proof. It is undisputed that the claimant suffered a heart attack on December 26, 2002, as he was finishing his work of "dollying up" the tractor trailer that was not properly attached to his truck. The question is whether the claimant has established by a preponderance of the evidence that "an accident is the major cause of the physical harm." A.C.A. § 11-9-114 states:

(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.

As with the fact that the claimant suffered a myocardial infarction while engaged in work activity, it is likewise undisputed that at the time of his accident, the claimant suffered from coronary artery disease, hypertension, and diabetes. Claimant's cardiologist, Dr. Scott Davis testified by way of deposition that the occlusion to the claimant's right coronary artery was precipitated by the claimant's hypertension and diabetes. In the Cardiac Catherization report dated December 26, 2002, Dr. Davis outlined his findings during the catheterization

and opined that the occlusion of "90% stenosis in the mid-portion of the vessel as well as a more eccentric 90% stenosis in the more mid-to-distal aspect of the artery, **felt to be the culprit of the patient's symptoms.**" Moreover, Dr. Davis testified that the claimant had the heart attack because he has coronary artery disease. While Dr. Davis agreed that the claimant sustained his heart attack while engaging in work activity, Dr. Davis's statement is not the same as opining that the work activity or accident was the major cause of the claimant's heart attack. On the contrary, Dr. Davis testified that the claimant's "preexisting hypertension, diabetes, coronary artery disease were a significant and major cause of his myocardial infarction on 12/26/02." Although Dr. Davis later agreed that the precipitating need or more than 51% percent of the need for treatment on December 26, 2002 was the claimant's exertion, I do not find this statement as persuasive as the majority. When I review the totality of Dr. Davis's deposition, I am left with the impression that the claimant's pre-existing condition is the major cause of the claimant's heart attack on December 26, 2002, while the claimant's work activity on that date was merely a precipitating factor. In other word, the work may have dislodged the plaque; however, but for the

pre-existing coronary artery disease the dislodged plaque would not have resulted in the claimant's need for treatment. In this regard I note Dr. Davis's testimony when he was asked early on about the claimant's prior history in which he volunteered the following testimony without being lead by either counsel:

Q. Okay. Do you have any information other than what is contained in your report regarding Mr. Kimbrell's prior history of either hypertension or diabetes?

A. No, but clearly in (sic) the presence of hypertension/diabetes represents the major cause of his infarction.

Q. And expound on that a little bit, what do you mean by that?

A. These are two of the major risk factors for coronary artery disease that are listed in any medical text as being a direct contributor, or increasing somebody's risk and risk factors for developing coronary artery disease.

In my opinion, I cannot find that the claimant has established by a preponderance of the evidence that his accident on December 26, 2002, was the major cause of his myocardial infarction. Dr. Davis made it clear in his deposition that the major cause of the claimant's myocardial infarction was the claimant's coronary artery disease,

hypertension and diabetes. Although the claimant's work played a role, it was not the major cause. Therefore, I must respectfully dissent.

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KAREN H. McKINNEY, Commissioner