

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F307554

ADAM J. MCCORKLE, EMPLOYEE	CLAIMANT
MAVERICK TUBE LP, EMPLOYER	RESPONDENT
CROCKETT ADJUSTMENT, CARRIER	RESPONDENT

OPINION FILED FEBRUARY 16, 2005

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

Claimant appeared *Pro Se*.

Respondent represented by HONORABLE JOHN D. DAVIS, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed.

OPINION AND ORDER

The respondent appeals a decision of the Administrative Law Judge filed on February 24, 2004. The Administrative Law Judge found that claimant sustained a compensable injury within the meaning of A.C.A. § 11-9-114. The only benefits claimant is seeking are those associated with one visit to the emergency room of a local hospital. After conducting a de novo review of the record, the Full Commission finds that the opinion of the Administrative Law Judge should be affirmed.

On June 16, 2003, claimant was 19 years old and on

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his first day of work for the employer. Claimant is "slightly built" and his job duties involved very heavy manual labor. Claimant's job was to lift and maneuver 10-foot 4x4 boards, which he estimated weighed 25 to 30 pounds. Claimant also described his working conditions in the shipping yard as "very hot" after the cool of the early morning hours wore off at approximately 10:30 a.m. Claimant worked 12 hour shifts from 6:00 a.m. to 6:00 p.m. Claimant testified that he did not have very much fluid intake during his shift. After working for several hours on June 16th, claimant began sweating and experiencing a sick feeling, along with pain in his abdomen and head. His body was also shaking uncontrollably. Claimant testified that after his lunch break, he began vomiting. However, claimant was able to finish out his 12-hour shift. He testified that on his way home from work, he began to experience muscle cramping.

After claimant arrived home, his mother realized claimant was experiencing physical problems and took him to the emergency room at Twin River Regional Medical Center where he was diagnosed with dehydration. The emergency room records show that claimant's skin was "dry," and his ear, nose, and throat were reported to have "dry membranes." The

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medical record noted that "wheezing" was observed from his lungs. Claimant complained of muscle cramping and vomiting. Claimant was administered fluids and discharged later that evening with instructions of 48 hours of home rest and to "push clear liquids." It is clear from the medical records that claimant was experiencing dehydration, but the words heat exhaustion or heat stroke were not used.

Claimant remained off work until June 18. Around noon on June 18, claimant again began to feel sick and shaky while performing his job duties. He, therefore, left work because he could not physically perform the required duties.

The Administrative Law Judge found that claimant sustained "a compensable injury arising out of and during the course of his employment with Maverick Tube, specifically, a heat stroke resulting in his becoming dehydrated and requiring medical services. The work-related heat stroke was the major cause of the claimant's injury and need for treatment, and was an unusual and unpredicted incident within the meaning of A.C.A. § 11-9-114."

On appeal, Respondents argue that claimant's dehydration was not work related but was caused by alleged alcohol intake over the weekend before the incident.

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Respondent's also argue that even if the dehydration is work related, claimant has not proved a compensable injury under Ark. Code Ann. § 11-9-114 because there was not an "unusual and unpredicted incident" and that the Administrative Law Judge erred in holding that the "heat stroke" was an unusual and unpredicted incident. We affirm the Administrative Law Judge's award of benefits and find that claimant's injury is compensable.

In a workers' compensation case, the claimant has the burden of proving by a preponderance of the evidence that the claim is compensable, i.e., that his injury was the result of an accident that arose in the course of his employment, and that it grew out of, or resulted from the employment. Carman v. Haworth, Inc., 74 Ark. App. 55, 455 S.W.3d 408 (2001). For the claimant to show compensability here, he must show under Ark. Code Ann. § 11-9-114 that the exertion associated with this accident was extraordinary and unusual compared to the employee's usual work or some unusual and unpredicted incident occurred that was the major cause of the physical harm. Mountain Home Manufacturing v. Hafer, 66 Ark. App. 127, 991 S.W.2d 127 (1999); Ulibarri v. Jim Wood Company, 79 Ark. App. 354, 87 S.W.2d 846 (2002).

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Ark. Code Ann. § 11-9-114 provides as follows:

(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, alternatively, that some unusual and unpredicted incident occurred which is found to have been the major cause of the physical harm.

The court has interpreted "accident" under §114(a) as "an event 'caused by a specific incident and identifiable by time and place of occurrence.'" City of Blytheville v. McCormick, 56 Ark. App. 149, 154, 939 S.W.2d 855 (1997) citing Ark. Code Ann. § 11-9-102(5)(A)(i) (Repl. 1996).

We find that the greater weight of the evidence indicates that claimant experienced a work-related physical injury, dehydration, as a result of heat exposure and inadequate fluid intake. Respondent speculates that

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claimant's condition was a result of excessive alcohol intake over the weekend before this incident. It is well settled that conjecture and speculation, even if plausible, cannot take the place of proof. Arkansas Methodist Hospital v. Adams, 43 Ark. App. 1, 858 S.W.2d 125 (1993).

Respondents argue that claimant had told co-workers Monday morning that he had been "partying" over the weekend while celebrating his birthday. Here, there is absolutely no evidence whatsoever to support respondent's speculation. Claimant denied drinking any alcohol over the weekend prior to his employment. His testimony was corroborated by several other witnesses. Even if claimant had been drinking alcohol over the weekend, we find that a preponderance of the evidence indicates that as a result of performing his job duties in the heat and his inadequate intake of fluids, claimant dehydrated.

As such, we also reject respondents' argument that claimant has not proved a compensable injury under Ark. Code Ann. § 11-9-114. While we agree that the Administrative Law Judge erred in holding that a "heat stroke," which is not documented by the medical records, was an unusual and unpredicted incident, we find that claimant nevertheless

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sustained a compensable injury. Specifically, we find that claimant's performance of very heavy manual labor in the heat without adequate fluid intake constitutes an "accident" under §114(a) and was the major cause of claimant's physical harm, dehydration. We also find that the dehydration that claimant suffered was preceded by the work-related accident. We also find that said "accident" amounts to an "unusual and unpredicted incident" pursuant to §114(b) (1).

Accordingly, based on our de novo review of the entire record, the Full Commission finds that claimant incurred a compensable injury in the form of dehydration and Respondents are liable to claimant for medical treatment related to that injury.

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 claimant's injury occurred after July 1, 2001, claimant's attorney's fee is governed by the provisions of Ark. Code Ann. § 11-9-715 as amended by Act 1281 of 2001. Compare Ark. Code Ann. § 11-9-715 (Repl. 1996)

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with Ark. Code Ann. § 11-9-715 (Repl. 2002). For prevailing on this appeal before the Full Commission, claimant's attorney is hereby awarded an additional attorney's fee in the amount of \$500.00 in accordance with Ark. Code Ann. § 11-9-715(b) (Repl. 2002).

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

SHELBY W. TURNER, Commissioner

Commissioner McKinney dissents.