

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F401831

DAVID E. SIMS, EMPLOYEE	CLAIMANT
AMERICAN RAILCAR INDUSTRIES, EMPLOYER	RESPONDENT
SPECIALTY RISK SERVICES, CARRIER/TPA	RESPONDENT

OPINION FILED MAY 17, 2005

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

Claimant represented by HONORABLE JOHN BARTELT, Attorney at Law, Jonesboro, Arkansas.

Respondent represented by HONORABLE RANDY P. MURPHY, 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 September 1, 2004.

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

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations agreed to by the parties are hereby accepted as fact.
3. On February 23, 2004, the claimant sustained an injury to his head, specifically, a skull fracture of the

right temporal bone with subdural hematoma.

4. The claimant's injury resulted from an idiopathic fall at work.

5. Even if the claimant sustained a compensable injury, which is not conceded herein, the claimant has failed to prove entitlement to temporary total disability after March 9, 2004, due to a lack of medical documentation subsequent to said date.

6. Respondents have controverted this claim in its entirety for purposes of attorney's fees.

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.

DISSENTING OPINION

_____ I must respectfully dissent from the Majority's opinion finding the claimant did not sustain a compensable, work-related injury on February 23, 2004 and that he is not entitled to receive temporary total disability benefits after March 9, 2004. The Majority, by adopting and affirming the Administrative Law Judge's opinion, finds the claimant's accident was not related to work on the premise that his fall was idiopathic in nature. The Majority fails to address whether the circumstances of the claimant's employment contributed to his injury. The Majority also finds the claimant is not entitled to receive temporary total disability benefits after March 9, 2004. I find the claimant

suffered from a compensable injury and that he has not returned to work. For these reasons, I respectfully dissent.

The claimant was employed by the respondent for approximately seven weeks. Prior to being hired, the claimant submitted to a physical. The physical did not reveal any problems with the claimant's health. He worked as a welder. More specifically, the claimant worked with railroad cars. The 73-foot-long railroad cars were placed on a table rig. Workers would stand on a two-foot-wide steel beam located over the rig in order to work on the carriage. The beam was part of the structure of the railroad car and is three feet in the air. The workers would also have to crawl under the beam, sit on top of the beam, crawl across the top of the beam, or walk down the beam in order to build each component. The workers would have to move back and forth between the center sill, C-channel, and side sill in order to work. The center sill, which was the center of the frame, was a steel beam approximately two feet in width. The center sill was located approximately two feet from the C-channel. To move from the center sill to the C-channel, one would have to negotiate a step six inches down and two feet over. The side sill was composed of a seven or

eight-inch top that was approximately three to four inches wide and two feet from the C-channel.

On February 23, 2004 the claimant was sitting on a side rail that he had welded and then stood up so he could, "weld the vees on top of the beam, the two foot beam." The claimant remembers beginning to stand up. The next thing he recalls is waking up in the hospital. A coworker, Blake Delmont was watching the claimant around the time of the accident and believed the claimant was about to try to negotiate the step from the center beam to the C-channel. The claimant was taken to Methodist Hospital, located in Paragould, Arkansas. The Emergency Room Physician Record indicates the claimant did not remember having any symptoms prior to falling. It also indicates that he lost consciousness and that it was a "single episode."

The claimant was subsequently transferred by helicopter to a hospital in Memphis. An unknown party completed a questionnaire regarding the claimant's medical history. The medical history indicated the claimant had a history of back pain and that his father had heart disease. The questionnaire also contains an illegible portion that says, "syncope spell." Just before those words, there is

additional writing with a circle around it. It is not possible to read what is in the circle. A Shock Trauma Flowsheet was also completed. It indicates the claimant's injury was due to a fall. The claimant was diagnosed with a cranial hematoma. Neurosurgery was performed on the claimant's head and he was in the hospital for four and a half days.

The claimant was restricted from working from February 13 to March 9, 2004. The doctor's note indicates that the claimant was, "off work until medically clear." At the time of the hearing, the claimant suffered from headaches that would sometimes last the entire day. Approximately twice a week, he would suffer from, "the shakes." As of the time of the hearing, the claimant had not returned to work.

The Majority finds the claimant suffered an idiopathic fall that did not arise during the course of employment. Courts generally have held that when a claimant suffers from an unexplained injury, it is compensable; whereas when a claimant suffers from an idiopathic injury, it is not. Little Rock Convention & Visitors Bureau v. David Pack, 60 Ark. App. 82 (1997); 959 S.W.2d 415(1997). An

idiopathic injury is an injury that is personal in nature or peculiar to the individual sustaining the injury. Id; Kuhn v. Majestic Hotel, 324 Ark. 21, 918 S. W. 2d 158 (1996). As an idiopathic injury is not related to the employment in order for it to be compensable, there must be conditions related to the employment which increase the dangerous effect of the fall. Leon B. Crawford v. Single Source Transportation Fidelity & Casualty Insurance Company, ___ Ark. App. ___ (June 30, 2004) citing Little Rock Convention & Visitors Bur., supra. See also, ERC Contractor Yard & Sales v. Robertson, 60 Ark. App. 310, 961 S.W.2d 36 (1998).

Regardless of whether the claimant fell due to fainting, Workers' Compensation law provides that if the conditions of the employment increased the dangerous effect of the fall, he is still entitled to benefits. However, the Majority does not address the work environment as a factor when making their decision. As such, their decision should be reversed as a matter of law.

The case at hand is analogous to two cases in which the Court of Appeals ruled that conditions related to employment increased the dangerous effects of a fall. In

Leon B. Crawford v. Single Source Transportation Fidelity & Casualty Insurance Company, the claimant worked as a driver. He was injured while he was stepping from an elevated position down steep steps on the truck. The Court found that the claimant's injury was not idiopathic as it was sustained in an effort to exit the employer's vehicle. Leon B. Crawford v. Single Source Transportation Fidelity & Casualty Insurance Company, supra. The Court noted that the step the claimant was, "negotiating two steep steps," and opined that the claimant's exiting the employer's truck from an elevated level contributed to his accident.

In ERC Convention Yard & Sales, the claimant worked on a scaffold some ten to fifteen feet in the air. The claimant suffered from a seizure due to alcohol withdrawal, which caused him to fall. The Court determined that while the reason for the fall was personal in nature, the claimant's employment conditions contributed to his injury. The Court said, "While the fall would normally not be compensable because it is personal in nature, in this case, claimant was placed on a scaffold 12 to 15 feet off the ground thereby increasing the effects of the fall." Id.

In the present case, the claimant was exposed to several employment factors that increased the effects of his fall. His work was, in fact, so dangerous in nature that the employer required him to wear a hard hat to protect his head. The claimant was working in the air around metal beams, and was apparently trying to negotiate a difficult and awkward step at the time of his injury. Delmont testified that the employer sometimes used cranes, but denied having knowledge that one was being used in the area near the claimant at the time of the injury. As the claimant suffered from subdural hematoma, it is likely the claimant struck his head on one of the steel beams.

The claimant explained his activities immediately preceding the accident as follows, "Well, I was sitting on a side rail that I had welded to it, and then I got up off the beam so I could weld the vees on the top of the beam, the two foot beam." The claimant testified that prior to standing up, he was attaching a canton bearing beam to a main beam and testified the last thing he remembered prior to falling, was finishing the weld and starting to stand up.

The claimant's coworker, Blake Delmont, testified he was watching the claimant near the time of the accident.

Delmont said the claimant was in the middle of the center sill and that the next step in his job would be "Probably getting down off the side sill and cleaning C-channels or start welding the C-channels." Delmont testified the claimant would be required to step down on to the C-channel and then to the ground. He indicated the C-channel was located two feet from the center beam and about six inches down from the beam. He also said the C-channel was four inches wide. Delmont's testimony indicates he was not watching the claimant at the time of the fall, but that he was watching him immediately preceding the fall. Delmont said, "And he was walking down the center sill of the car and I started to do something, and about a minute later one of the people that works on the car that he works on yelled at me." Delmont went on to say, "And when they yelled, I looked over at them, and pointed down from top of the car, and he was leaned over the channel." Delmont's testimony that he observed the claimant walking down the sill, that the next step in his job would probably be to walk down the stairs, combined with his testimony the claimant was slumped over the C-channel, show that it is more probable than not the claimant was attempting to go down the stair at the time

of his fall. From Delmont's testimony, it is also clear that the stair the claimant was negotiating was awkward in that he had to step six inches onto a beam that was four inches wide. Therefore, it is more probable than not the claimant's attempt to negotiate the step contributed to and increased the dangerous effect of his fall.

Likewise, the claimant's height in the air at the time of the fall also contributed to the dangerous effect of his fall. The claimant was some five feet in the air. Just as in ERC Convention Yard & Sales, where the claimant was in the air 10 to 15 feet, the claimant in the present case was injured in part, due to the unusual circumstances of his work surroundings. In addition to being in the air and negotiating a difficult step, the claimant was also exposed to an increased risk of injury in that he was surrounded by steel beams. Since the only plausible explanation for the claimant's injury is that he struck his head on one of the beams and likely fell from one metal beam to the other, it is apparent that the dangerous nature of the work site did in fact contribute and worsen the effects of the claimant's fall. Therefore, even if one agrees with the Majority's findings of fact, the claimant's fall is still compensable

in light of the increased dangerous effect of the claimant's work and his injury.

The claimant requested temporary total disability benefits for the time period of February 23, 2004 to a date to be determined. Temporary total disability for unscheduled injuries is that period within the healing period in which claimant suffers a total incapacity to earn wages. Ark. State Highway & Transportation Dept. v. Breshears, 272 Ark. 244, 613 S.W.2d 392 (1981). The healing period ends when the underlying condition causing the disability has become stable and nothing further in the way of treatment will improve that condition. Mad Butcher, Inc. v. Parker, 4 Ark. App. 124, 628 S.W.2d 582 (1982).

The Majority denied the claimant temporary total disability benefits on the basis that he sustained an idiopathic fall. The decision relied on by the Majority notes that if the claimant had been entitled to benefits, it would only be to the time of March 9, 2004 as that is the date of the last medical report. The decision relied on by the Majority also indicates the report was for the time of March 9 or until medically cleared. These findings are erroneous.

Neither party disputes the claimant sustained an injury to his head while at work or that he was subsequently hospitalized and underwent surgery to treat that injury. The doctor's note referred to by the Administrative Law Judge says the claimant is restricted from working from 2-23-04 to 3-9-04 but also indicates that the claimant's date to return to work is "TBA". Additionally, the form, under the section, "Limitations/Remarks:" provides, "Off work till medically clear." As such, the report in no way indicates the claimant was released to return to work on March 9, 2004. In fact, the note seems to imply just the opposite. The claimant said he has been to the doctor since March 9, 2004, but that he has not returned to work, which supports a finding he remains in his healing period. Additionally, there is no evidence to show the claimant has, in fact, reached maximum medical improvement or that he is no longer in his healing period.

Ultimately, the evidence indicates the claimant struck his head after falling during the process of negotiating a difficult step. The claimant worked in the air and struck his head on a metal beam, indicating the circumstances of his work worsened his injury. As a result

of that injury, the claimant has been unable to work and remains unable to work. Even if the claimant did faint, Workers' Compensation law is clear that he would still be entitled to receive benefits since the circumstances of his work contributed to the effects of his injury. Despite the clarity of law in this area, the Majority does not consider or address it. For the aforementioned reasons, I respectfully dissent.

SHELBY W. TURNER, Commissioner