

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F400145

JOHN C. BROWN (DECEASED),  
EMPLOYEE

CLAIMANT

ATLANTIC RESEARCH CORP.,  
EMPLOYER

RESPONDENT

GALLAGHER BASSETT SERVICES, INC.,  
TPA / INSURANCE CARRIER

RESPONDENT

OPINION FILED AUGUST 15, 2006

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

Claimant represented by the HONORABLE TIM A. WOMACK, Attorney at Law, Camden, Arkansas.

Respondents represented by the HONORABLE ERIC NEWKIRK, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed.

OPINION AND ORDER

Respondents appeal an opinion and order of the Administrative Law Judge filed August 30, 2005. The respondents denied the claim, contending that the claimant's activities at the time of his heart attack were not unusual and were part of his regular job duties. After a hearing, an Administrative Law Judge found that the claimant had provided sufficient evidence to meet the requirements of Ark. Code Ann. §11-9-114 and had thereby established the

occurrence of a compensable heart attack. The respondents were directed to pay all appropriate benefits based upon that finding. From that decision, the respondents filed the present appeal. Based upon our de novo review of the record, we find that the Administrative Law Judge's decision was correct in all respects and should be affirmed.

John Brown was an employee of the respondents who suffered a fatal heart attack while at work on June 2, 2003. (We shall hereafter refer to the decedent as the claimant). There is no real dispute on the basic facts of this case. The claimant was employed as a technician at the respondents' missile factory. Normally, his job duties involved the inspection of missile parts and other jobs related to missile assembly. Most of the work duties were carried out in an air-conditioned environment. According to the claimant's immediate supervisor, 75% of the buildings in the factory complex are air-conditioned. The only outside work the claimant was required to perform was some mowing of the grassy areas outside the production buildings. According to James Wilson, a supervisory employee of the respondents, who, at times, personally oversaw the claimant,

it was the responsibility of the claimant's department to maintain the grassy areas around the buildings. According to him, this job would begin in late May or early June and continue through August. Apparently, Mr. Wilson or some other supervisory employee would, from time-to-time, request volunteers for the mowing assignment. This job took approximately one day, every other week, during the summer.

On the date in question, the claimant and another coworker had volunteered to do the mowing. At approximately 1:00 p.m., the claimant collapsed. Christie Keithley, the plant nurse, testified that attempts were made to resuscitate the claimant using an electronic device, but the efforts were unsuccessful.

At the time of his death, the claimant was 60 years of age, weighed in excess of 300 pounds, and was a diabetic. He had also been diagnosed with high cholesterol, and high blood pressure. However, his diabetes, cholesterol, and high blood pressure conditions were all controlled by medications. Further, prior to his death, the claimant had not been known to suffer from any heart or cardiac-related ailments.

The first issue in dispute concerns the exact cause of the claimant's death. The death certificate prepared by Dr. Rollin Wycoff, a general practitioner in Camden, Arkansas, stated that the claimant's death was the result of a complication of diabetes. Additional medical testimony was provided in this case by Dr. William Daniel, a Board Certified specialist in internal medicine (who is coincidentally a partner of Dr. Wycoff).

Before discussing Dr. Daniel's testimony, there is a procedural issue which must be resolved regarding the admission of his testimony and a related medical report. Originally, this case was to be set for a hearing on March 17, 2005. That hearing was cancelled because of a problem with the court reporter and the hearing was rescheduled. Some time after the March 17<sup>th</sup> hearing date, but more than seven days prior to the July 21<sup>st</sup> hearing, the claimant tendered a report from Dr. Daniel dated May 6, 2005 and indicated that Dr. Daniel himself would be called as a witness. At the hearing, the respondents attorney objected to the admission of Dr. Daniel's report and objected to allowing the testimony of Dr. Daniel. The grounds for this

objection was that the medical report and the notice of Dr. Daniel's testimony had not been furnished to the opposing counsel prior to March 10, 2005, seven days prior to the original hearing date. The Administrative Law Judge overruled the objection and allowed the report and testimony into the record.

The respondents renewed that argument on appeal, contending that the Commission should not consider either Dr. Daniel's testimony or his written report. As we understand it, the gist of this argument is that since Ark. Code Ann. §11-9-705(c)(2)(A) requires that medical reports and notice as to testimony of physicians must be provided to the opposing counsel seven days prior to the date of the hearing, and since the case was originally set for March 17, 2005, no evidence could be made a part of the record unless it was submitted more than seven days prior to the original hearing date.

We find that the Administrative Law Judge's decision to overrule this objection is correct for two reasons. First, Ark. Code Ann. §11-9-705(a) specifically states that this Commission is not bound by technical rules

of evidence or procedure. The purpose of that statute is to allow a simplified forum so that the parties can present their evidence in a fashion which is equitable and expeditious. The admission of Dr. Daniel's report and testimony does not prejudice the respondents in any way since they were fully aware of his report and his likelihood of being a witness substantially before the actual hearing was held. The respondents are attempting to make a very technical and procedural argument so as to prevent the claimant from providing evidence which is relevant to the resolution of this case and which is critical to establishing his entitlement to benefits. This is exactly the situation that the legislature sought to avoid in providing that this Commission is not bound by such technicalities. We, therefore, conclude that the respondents' argument is without merit and should be summarily rejected.

We also find that even if we were to apply the seven-day rule, the evidence in question would still be admissible. The requirement is that evidence must be provided to the opposing party seven days prior to the date

of the hearing. In this case, the respondents asserts that the date in question is March 10, 2005, which is seven days prior to the original hearing date. However, no hearing was actually held on that date. Therefore, March 10, 2005, is a date of no significance. The hearing was, in fact, held on July 21, 2005. In order to be admitted into evidence in the record, the proffered evidence must be provided to the opposing counsel seven days prior to that date, or July 14, 2005. There is no question that the medical report and testimony of Dr. Daniel meets that requirement. Therefore, even under the strict interpretation asserted by the respondent, we still find that their argument has absolutely no merit and their objection to the evidence should be overruled.

Dr. Daniel stated that he disagreed with the cause of death listed on the death certificate. Based upon his review of the evidence and descriptions of the claimant's condition at death, he believed the claimant died as a result of a sudden cardiac arrhythmia. In support of that conclusion, Dr. Daniel testified that death resulting from diabetic complications follow a gradual deterioration

of an individual's overall health until their body functions cease. In the present case, the claimant had been functioning normally prior to his death, and it appeared from efforts to resuscitate him that his heart had simply stopped and the first responders were not able to establish any type of cardiac rhythm. Dr. Daniel opined that the conditions surrounding the claimant's death suggested that a cardiac failure was the cause of his death. The factors cited by the doctor were the claimant's considerable obesity, the fact that he was working out-of-doors on a warm, humid day, and was exerting himself more than he normally would have. In addition to Dr. Daniels, Ms. Christie Keithley, the company's plant nurse, also stated that it appeared to her, because of the efforts to revive the claimant, that he had suffered a cardiac arrest.

Injuries involving the heart are governed by Ark. Code Ann. §11-9-114. That section provides, in essence, that a cardiovascular accident is only compensable if, in relation to the other contributing factors, an accident was the major cause of the physical harm. The section goes on to provide that the injury would not be considered

compensable unless the exertion precipitating the disability or death was "extraordinary or unusual in comparison to the employee's usual work in the course of the employee's regular employment. ..."

Even though the claimant's death certificate states that his death is the result of diabetes, we believe the facts of this case clearly establish that his death was the result of a cardiac failure occurring at his place of employment. We agree with Dr. Daniel that the circumstances of the claimant's death indicate that he suffered a sudden cardiac failure and did not die as the result of his diabetes. Even Ms. Keithley, a registered nurse and an employee of the respondents, testified that the claimant's death was the result of heart failure. That conclusion was also supported by the attempts by the respondents to restart his heart using electrical stimulation and similar CPR techniques.

In applying the relevant portions of that Act to the facts of the present case, it is clear to us that the claimant's heart failure was a compensable injury. While it is true that the claimant had a number of risk factors

associated with heart disease, such as high blood pressure, high cholesterol, and obesity, it does not appear that these conditions played a significant role in his death. The claimant's blood pressure was being controlled by medication and the medical evidence establishes that, under those circumstances, it does not increase the likelihood of a cardiac event. Likewise, he was being treated for high cholesterol, which also limits that condition as a likely causative factor. It also does not appear that the claimant had been suffering from any heart problems in the past and testimony from his family members suggest that he had not limited his activities nor had he ever complained of any symptoms indicative of previous heart disease. The evidence is overwhelming that the cardiovascular event on June 2, 2003, was an accident, and not the result of a prior cardiovascular condition.

The next issue is whether the claimant's exertion in carrying out his job duties was the precipitating factor of his cardiac arrest. Once again, there appears to be little doubt that it was. The claimant was mowing the grass on a warm, humid day. Evidence presented at the hearing

indicate that at 1:00 p.m., the approximate time the claimant collapsed, the temperature was in the upper 80's and the humidity was in the mid to upper 60's. This creates a heat index well above 90 degrees, which would undoubtedly place the claimant under considerable stress. Further, the testimony of his daughter and wife indicate that his clothing was soaking wet following his collapse. The respondents suggested at the hearing that this condition could have been because of water. However, considering it had not rained prior to the claimant's collapse and he was working out-of-doors, it is almost certain that the sodden condition of his garments was the result of excessive perspiration. The fact that he was sweating so profusely would indicate that his body was not able to adequately cool itself using its regular mechanisms.

Another witness who testified in the hearing was Charles Jenkins, a coworker of the claimant, who was assisting him in the grass-cutting duties. According to Mr. Jenkins, the grass was high and pushing the lawn mower was difficult. In fact, Mr. Jenkins testified that he preferred to use the weed eater instead of pushing the lawn mower.

Mr. Jenkins further testified that, at the time of the claimant's collapse, the claimant had been performing this work for several hours.

The claimant's family members testified that the claimant had a somewhat sedentary lifestyle and that he rarely worked outside or engaged in any strenuous activities outside his work. Also, according to the testimony of Mr. Wilson, a supervisor with the respondents, approximately 75% of the buildings in which the claimant would have worked were air-conditioned. Considering all those factors, it would appear to us that the exertion involved in spending several hours outside on a hot day would have been the precipitating factor of the claimant's fatal heart failure.

The final issue is whether the activities the claimant was engaging in were extraordinary and unusual when compared to his usual work. The respondents assert that mowing the grass was a part of the claimant's job duties and that it cannot be considered extraordinary and unusual. However, according to Mr. Wilson, the respondents' own witness, grass-cutting duties only occurred for approximately a three-month period beginning at the end of

May and running through the first part of September. He also stated that it was no more than one or two days every other week. Also, this task is one for which he called for volunteers and was not regularly assigned to the claimant. At most, the claimant would have carried out the grass-cutting duties no more than five or six times a year. We also note that the claimant's job evaluations were made part of the record and that these evaluations do not include cutting grass as one of the functions of his job and, as confirmed by Mr. Wilson, "Production comes first."

As found by the Administrative Law Judge, just because the claimant's job duties would, from time-to-time, require him to cut the grass, does not mean that engaging in these activities could not be unusual or extraordinary in relation to his typical job requirements. There is no doubt that the claimant's primary job functions involved quality control and other aspects of the respondents' missile assembly operation. Also, it is readily apparent from the testimony that the vast majority of the claimant's work day would have been spent in air-conditioned, climate-controlled areas. The claimant obviously spent very little of his time

in a hot, humid environment such as was required of him only a few times during the year when he was cutting grass outside.

This Commission considered a similar case in Kimbell v. USA Truck, Full Commission Opinion, Filed July 7, 2005 (Claim No. F200739). In that case, the claimant was a truck driver who had his truck come unhooked from his tractor while pulling out onto a roadway. The claimant then had to dolly the trailer up so as to re-hook it to the tractor. However, while performing this activity, it was bitterly cold with temperatures well below freezing. This Commission held that the claimant's resulting heart attack was compensable because of the stress involved in raising his trailer in such bitterly cold conditions. Obviously, raising a trailer is not an unusual activity for a truck driver, but raising one in the circumstances in the Kimbell case was sufficient to meet the requirements of a compensable injury.

The Court of Appeals also had a similar situation in Huffy Service First v. Ledbetter, 76 Ark. App. 533, 69 S.W.3d 439 (2002). In that case, the claimant was an

assembler of lawn tractors and other equipment. Usually, this work was done out-of-doors. However, on one particular day, the temperature was very hot and the claimant was required to do his work in a semi-enclosed area with little air circulation. His resulting heart attack was found to be compensable because of the additional stress placed upon him by the weather.

We believe that the decisions in Kimbell and Ledbetter compel a finding of compensability in the present claim. While the claimant's job duties did, on occasion, require him to engage in lawn-cutting, the evidence clearly establishes that this was not an every-day event and was something undertaken very rarely, no more than a few times every year. Further, the claimant's coworker testified that pushing the lawn mower was very difficult because of the high grass, and the heat clearly placed an additional stress on the claimant because of his physical exertion.

In conclusion, it is our finding that the claimant's job activities in the form of cutting grass were unusual and that it was only performed a few times a year and was done under physically stressful conditions. We

have no hesitation in finding that his work was extraordinary and unusual in relation to his regular work and that the exertion from the work was the precipitating factor of his cardiac failure. We, therefore, find that the claimant has established a compensable cardiac injury and award his spouse all appropriate benefits. Since this was the result reached by the Administrative Law Judge, we believe his Opinion should be affirmed.

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 as amended by Act 1281 of 2001. Compare Ark. Code Ann. §11-9-715 (Repl. 1996) 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.

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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 respectfully dissent from the majority opinion finding that the claimant's fatal collapse, which occurred on June 2, 2003, to be a compensable injury under the guidelines set forth in Arkansas Code Ann. §11-9-114.

My carefully conducted de novo review of this claim in its entirety reveals that the claimant's estate (hereinafter claimant) has failed to prove by a preponderance of the evidence that the exertion of work necessary to precipitate the claimant's death was extraordinary and unusual exertion in comparison to his usual work in the course of his regular employment, or that some unusual and unpredicted incident occurred which was the major cause of his death. Additionally, I find that the expert opinion of Dr. W.A. Daniels should be excluded from

consideration in this claim in that the respondents were not given proper notice pursuant to Ark. Code Ann. §11-9-705. Nevertheless, the majority having found that the testimony and letter of Dr. Daniels is admissible, having considered this evidence, I still find that the claimant has failed to prove by a preponderance of the evidence that he sustained a fatal heart attack pursuant to Arkansas Code Ann. §11-9-114.

The respondent asserts that the testimony of the claimant's expert witness, Dr. William A. Daniels, was improperly considered by the Administrative Law Judge because of the timeliness of his being listed as a witness. More specifically, the respondent asserts that the Administrative Law Judge committed reversible error by allowing Dr. Daniel to testify as an expert witness, in that the matter had been originally scheduled for full hearing on March 17, 2005, and was cancelled due to the failure of the Administrative Law Judge's court reporter to appear at the hearing. Doctor Daniels was neither identified as a witness nor had reports from him been furnished by the claimant prior to the March 17<sup>th</sup> hearing, as per instructions contained within the Pre-Hearing Order filed November 15, 2004. Pursuant to Arkansas Code Ann. §11-9-705(c)(2)(A):

Any party proposing to introduce medical reports or testimony of physicians at the hearing of a controverted claim, shall, as a condition precedent to the right to do so, furnish to the opposing party and to the commission copies of written reports of the physicians of their findings and opinions at least seven (7) days prior to the date of the hearing. However, if no written reports are available to a party, then the party shall, in lieu of furnishing the report, notify in writing the opposing party and the commission of the name and address of the physicians proposed to be used as witnesses at least seven (7) days prior to the hearing and the substance of their anticipated testimony.

Moreover, in making an investigation or inquiry or conducting a hearing, the Workers' Compensation Commission shall not be bound by technical or statutory rules of evidence or by technical or formal rules of procedure. Ark. Code Ann. §11-9-705(a)(1)). In addition, a party failing to observe the requirements of Arkansas Code Ann. §11-9-705, may not be allowed to introduce medical reports or testimony of physicians at a hearing, except in the discretion of the hearing officer or the commission. Ark. Code Ann. §11-9-705(c)(3). The claimant has failed to show good cause as to why the testimony of Dr. Daniels

should be allowed into evidence, as it appears to have been an afterthought in order to strengthen the claimant's position. The claimant's tactical maneuver of adding expert testimony after the original full hearing was cancelled and the 7 day deadline had passed is not in keeping with the basic rules of fair play, such as recognizing the right of cross-examination and the necessity of having all the evidence in the record.

A review of the medical records reveals that the claimant had been previously diagnosed with type 2 diabetes mellitus, hypertension, hyperlipidemia, and obesity. The medical notes of one of the claimant's regular treating physicians, Dr. Michael Herbert, reflect that the claimant received periodic treatment for these chronic conditions, and that he took various medications to control them. In his clinic note dated April 9, 2003, Dr. Herbert reported that a chest x-ray taken on that date showed a mild enlargement of the claimant's heart. In addition, comprehensive multi-phase medical testing performed by Professional Health Services on May 5, 2003, showed an abnormality in the claimant's pulmonary functioning, suggesting a possible early stage mild obstructive deficiency. Obviously, the claimant's

extreme obesity presented serious risks to the claimant's health and well-being, as did his diabetes and high blood pressure. According to Ms. Keathley, the claimant, who weighed well over 300 pounds at the time of his death, was non-compliant in the areas of diet and exercise. Finally, Ms. Keathley's health services progress notes from June 2, 2003, reflect that she was advised by Dr. Tabe at the hospital that the rescue team did "all they could with very good effort" in their failed attempts to resuscitate the claimant, but that the claimant's "physical condition was just too poor" for him to have survived what Dr. Tabe believed to be a massive heart attack. Another of the claimant's regular treating physicians, Dr. Wycoff, signed the certificate of death and listed the single cause of death as "Type II Diabetes Mellitus".

The record reflects that the claimant had been working outside all day on June 2, 2003. The temperature was about 85 degrees at the time of his death, with the humidity being around 65 percent. The record further reflects that it was "mostly cloudy" at around 1 p.m. on June 2, 2003. Even so, Mr. Wilson testified that the claimant had been mowing a shaded area at the time of his collapse, and that he and

Mr. Jenkins had taken a water break 10 minutes prior to the incident. Further, Mr. Wilson's testimony reflects that the claimant was allowed to take breaks from this activity at any time he felt he needed to rest. Although the record indicates that the claimant was using a push mower on June 2, 2003, and that the terrain was sometimes a bit rough, the record in no way demonstrates that this was unusual or extraordinary. Rather, the record reveals that the claimant had always used a push mower at work and that he was familiar with the terrain, in that he had stepped in a hole and twisted his knee while mowing the previous August. Further, the record is devoid of evidence that the claimant ever asked for a modification of this duty, such as a riding mower.

Finally, the record establishes that the claimant performed work indoors a great deal; but, part of the claimant's indoor activities were routinely performed in buildings with no air conditioning. Therefore, it is obvious that the claimant was not always privileged to work in a temperature controlled environment. Moreover, reasonable minds could conclude that the claimant working on a hot day in a closed building with no air conditioning presented a

potentially greater risk to the claimant of overheating than working outside in the fresh air on such a day. This conclusion is supported by the testimony Mr. Jenkins that it was not unusual to sweat both indoors and out.

Further, the record does not indicate that an unusual or unpredicted event occurred on June 2, 2003, that was the major cause of the claimant's physical harm. The claimant, who had begun work at the usual time of 6:30 a.m., had been mowing for approximately 5 hours at the time of his collapse. By all accounts, he had taken his regular scheduled morning break at 8:30 a.m., then his regular lunch break from 11:30 a.m. to noon. Mr. Wilson testified that he observed the claimant taking an unscheduled water break about 10 minutes before he collapsed, which was at 1:05 p.m. The claimant had seen the plant nurse, Ms. Keathley, earlier in the day for a recheck of his eyes, at which time he did not complain, nor did he show signs or symptoms of cardiac arrest. In addition, the claimant did not complain to Ms. Keathley of any unusual event that had happened that day.

After having resumed mowing subsequent to his water break, the claimant suddenly, and without warning, collapsed and died of what appeared to be a massive heart

attack. However, no blood enzymes were taken at the hospital subsequent to the claimant's collapse to confirm that the claimant had suffered a heart attack, nor was an autopsy performed. Therefore, the stated opinion of Ms. Keathley, and the alleged opinion of Dr. Tabe that the claimant died from a myocardial infarction, is not supported by objective medical evidence. That the claimant died of a myocardial infarction is, at best, an educated guess rather than a conclusive diagnosis, especially in light of Dr. Wycoff having listed the claimant's cause of death as Type II Diabetes Mellitus. Further, even considering the testimony of Dr. Daniels, his testimony does not support a finding that the claimant sustained a fatal heart attack which was caused by unusual or extraordinary work activity, or that some unusual and unpredicted incident occurred that was the major cause of the claimant's physical harm. First, Dr. Daniels agreed that neither heat stroke nor heat exhaustion were likely factors in the claimant's collapse. Further, Dr. Daniel's agreed that prolonged diabetes, such as the claimant's, greatly increases the risk of heart attack, especially among people who are grossly overweight, as was the claimant.

In slight contradiction to his testimony, however, in his letter of opinion dated May 5, 2005, Dr. Daniels stated the following:

It is my opinion that this [the activity of the claimant's day] was extraordinary and unusual exertion because [this] activity was more than the claimant was usually employed in, and the day was especially hard on a man of his size because of the heat and humidity. His death certificate listed the cause of death as a complications of diabetes mellitus of an unknown time. However, at least one physician in the emergency room, Dr. Tabe, suggested (emphasis added) that this was a myocardial infarction and from my reading of the history that is available to me, the sudden death, and the inability to resuscitate the patient, I suspect (emphasis added) this is caused from a cardiac event, probably an acute myocardial infarction. It happened in the patient's employment, but not in his usual and customary employment.

On cross-examination, Dr. Daniels agreed that, unlike his partners, Dr. Herbert and Dr. Wycoff, he had never seen the claimant, much less treated him. Furthermore, Dr. Daniels agreed that he had no knowledge, other than from the reports he had been furnished, what the claimant's daily work activities consisted of. When asked whether his opinion

regarding the claimant's cause of death would change should he learn that the claimant routinely mowed and was exposed to outdoor conditions, Dr. Daniels replied, "It might change my opinion is (sic) he routinely mowed under those conditions, the heat and humidity, yes, sir.". Other than such factors as the claimant's preexisting health conditions and the heat and humidity, Dr. Daniels stated that "lunch could even play a part" in the reason for the claimant's collapse.

Anything that changes your circulatory situation can make and institute a heart attack at that particular event, particular second, and I think this heat and humidity was hazardous.

In later testimony, Dr. Daniels added....

Eric [Newkirk] stated that heat prostration or heat stroke or something like that, those would certainly be considered an accident. They could cause a sudden death if a patient had an electrolyte imbalance from maybe drinking too much water or sweating out salt, but it's heart arrhythmia and even to physicians, a sudden deadly arrhythmia is essentially equivalent to a heart attack.

Dr. Daniels admitted that his knowledge of the heat index on June 2, 2003, stemmed from information he had

been provided. As previously discussed, however, weather reports from that day indicate that the humidity was at the lowest point that it had been for the day at the time of the claimant's death. Further, Dr. Daniels admitted that he had not seen an emergency room report from Dr. Tabe regarding his opinion that the claimant had suffered a fatal heart attack. Rather, Dr. Daniels testified that he relied on statements that "other employees and the EMTs that accompanied the patient to the emergency room" had made concerning what Dr. Tabe said. The only document contained within the record that indicates that Dr. Tabe opined that the claimant had suffered from a heart attack was the previously mentioned health services progress note from Ms. Keathley. Dr. Tabe did not testify by deposition or at the hearing, nor are there documents contained within the medical records reflecting his treatment of the claimant or his official opinion concerning the claimant's cause of death. Thus, any alleged statements made by Dr. Tabe in reference to the claimant's cause of death, or otherwise, are hearsay, they are not supported by objective medical evidence, and these statements should not be considered for purposes of this review.

Finally, Dr. Daniels testified that he disagreed with Dr. Wycoff's opinion regarding the claimant's cause of death, but he admitted that he had no reason to question Dr. Wycoff's judgment. Dr. Daniels further agreed that another physician reviewing the same factors surrounding the claimant's death might offer a different opinion as to the cause of the claimant's death. Finally, Dr. Daniels admitted that the major part of his opinion was based on information that mowing was not one of the claimant's usual or ordinary activities.

The Commission has the authority to accept or reject a medical opinion and the authority to determine its probative value. Poulan Weed Eater v. Marshall, 79 Ark. App. 129, 74 S.W.3d 878 (2002). The Commission may accept only those portions of testimony that it determines are worthy of belief. Tucker v. Roberts-McNutt, 342 Ark. 511, 29 S.W.3d 706 (2000). Furthermore, it is well established that it is within the Commission's province to weigh all the medical evidence and to determine what is most credible. Smith Blair, Inc. v. Jones, 77 Ark. App. 273, 280, 72 S.W.3d 560 (2002). The Commission is entitled to review the basis for a doctor's opinion in deciding the weight and credibility of

the opinion and medical evidence. Id. Even if it is found that Dr. Daniels' testimony should be considered, the basis for his medical opinion concerning the claimant's cause of death is shallow, in that he offers no objective medical findings to support his opinion. Therefore, Dr. Daniels' testimony concerning his expert opinion of the claimant's cause of death is of little probative value and it should be given little weight.

Otherwise, based on the above and foregoing, the claimant has failed to prove by a preponderance of the evidence that he sustained a fatal heart attack pursuant to Arkansas Code Ann. §11-9-114. I find that the preponderance of the evidence demonstrates that mowing was neither an extraordinary or unusual work activity compared to the employee's usual work. In addition, the preponderance of the evidence fails to show that some unusual and unpredicted incident occurred that was the major cause of the claimant's physical harm. Rather, the preponderance of the evidence reveals that the claimant's actual cause of death was more likely than not caused by his preexisting health conditions, which were unrelated to his employment.

Therefore, I respectfully dissent from the majority opinion.

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KAREN H. MCKINNEY, Commissioner