

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F403603

BARBARA S. EDWARDS, EMPLOYEE	CLAIMANT
FAMILY DOLLAR STORES, INC., EMPLOYER	RESPONDENT
ST. PAUL TRAVELERS, INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED MARCH 16, 2006

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

Claimant represented by the HONORABLE JOHN C. BARTTELT, Attorney at Law, Jonesboro, Arkansas.

Respondents represented by the HONORABLE MARK ALAN PEOPLES, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Respondents appeal an opinion and order of the Administrative Law Judge filed November 30, 2005. In said order, the Administrative Law Judge made 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 reasonable and are hereby accepted as fact.
3. The claimant has proven, by a preponderance of the credible evidence, that she sustained a heart attack on March 26,

2004, which arose out of and during the course of her employment with Family Dollar Stores, Inc., which was the result of extraordinary and unusual job stress in comparison to the claimant's regular employment, both extraordinary and unusual physical job stress, as well as extraordinary and unusual employment mental job stress and which was the major cause of the claimant's heart attack.

4. Respondents are responsible for all hospital, medical, and related expenses as the result of the claimant's March 26, 2004, heart attack and remain responsible for continued, reasonably necessary medical treatment.

5. The claimant's healing period ended April 15, 2004, at which time the claimant returned to work for the employer herein.

6. The claimant is entitled to temporary total disability benefits for the period beginning March 27, 2004, and continuing through April 15, 2004.

7. All additional issues have been specifically reserved.

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 made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

We therefore affirm the November 30, 2005 decision of the Administrative Law Judge, including all findings

of fact and conclusions of law therein, and adopt the opinion as the decision of the Full Commission on appeal.

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.

OLAN W. REEVES, Chairman

SHELBY W. TURNER, Commissioner

Commissioner McKinney dissents.

DISSENTING OPINION

I must respectfully dissent from the majority's opinion finding that the claimant sustained a compensable heart attack for which she is entitled to benefits. It is undisputed that the claimant was involved in an armed robbery during the course and scope of her employment. The claimant testified that when the gun was pointed at her face she first noticed the she was having some discomfort or pain in her chest. Specifically, when asked when she first felt pain in her chest, she stated; "Right away. When the gun was pointed at my face, I was so frightened till it was just like (gasping), it scared me so bad." However, it was not until after the handcuffs were removed and she was standing out in front of the store that she really started worrying that something was wrong with her heart.

The burden of proof rests upon the claimant to prove the compensability of her claim. Ringier America v. Comles, 41 Ark. App. 47, 849 S.W.2d 1 (1993). There is no presumption that a claim is compensable, that the claimant's injury is job-related or that a claimant is entitled to benefits. Crouch Funeral Home v. Crouch, 262 Ark. App. 417, 557 S.W.2d 392 (1977); O.K. Processing,

Inc. v. Servold, 265 Ark. 352, 578 S.W.2d 224 (1979).

The party having the burden of proof on the issue must establish it by a preponderance of the evidence. Ark. Code Ann. § 11-9-704(c)(2) (Repl. 1996). In determining whether a claimant has sustained her burden of proof, the Commission shall weigh the evidence impartially, without giving the benefit of the doubt to either party. Ark. Code Ann. § 11-9-704; Wade v. Mr. C Cavanaugh's, 298 Ark. 363, 768 S.W.2d 521 (1989); and Fowler v. McHenry, 22 Ark. App. 196, 737 S.W.2d 663 (1987). A.C.A. § 11-9-114 provides:

(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 or unpredicted incident occurred which is found to have been the major cause of the physical harm.

(2) Stress, physical or mental, shall not be considered in determining whether the employee or claimant has met his or her burden of proof.

Moreover, "(a)dmnistrative law judges, the commission, and any reviewing courts shall construe the provisions

of this chapter strictly." A.C.A. § 11-9-704(c) (3). Finally, we must remember that the General Assembly admonished the Commission and the Courts to leave the duty of excluding, or adding physical conditions, injuries or diseases to the definition of compensability or from liberalizing, broadening, or narrowing the scope of the workers' compensation statutes to the General Assembly. See A.C.A. § 11-9-1001.

Despite the claimant's attorney's attempts to characterize the claimant's activities of wriggling on the floor over to the door while handcuffed at her hands and ankles and of standing around with her legs crossed and handcuffed as an unusual and extraordinary physical exertion, it is clear from the claimant's testimony that she developed chest pain prior to ever expending one ounce of physical effort. The claimant testified that she started gasping from chest pain when the gun was first pointed at her. It was this emotional stress that triggered the claimant's heart attack. A.C.A. § 11-9-114(b) (2) clearly states that "(s)tress, physical or mental, shall not be considered in determining whether the employee or claimant has met his or her burden of proof." The Administrative Law Judge has liberalized and broadened this section to find that so long as the stress was extraordinary or unusual, then a heart attack caused by such stress is compensable. There are no such

clarifying words found in subsection (b) (2). This section is clear and unequivocal - stress may not be considered in a heart attack claim.

The claimant's family physician, treating cardiologist, and his nurse practitioner wrote letters on the claimant's behalf opining that the stress from the armed robbery contributed to the claimant's heart attack. At the request of the claimant's attorney, the claimant's cardiologist wrote a second letter stating that "...an extreme emotional, and in this case even physical event, can precipitate a sudden myocardial infarction and in my opinion, this is exactly what did occur after." After being questioned by the attorneys in this claim, the cardiologist concluded that it was the emotional aspect of the robbery, or the emotional duress which resulted from the robbery that precipitated the claimant's heart attack. Stated another way, the emotional stress from the robbery caused the claimant's heart attack. Irrespective of the fact that the robbery clearly occurred during the course of the claimant's employment, and that it was this stressful event that caused the claimant's heart attack, A.C.A. § 11-9-114(b) (2) unequivocally excludes the consideration of this stress in determining the compensability of the claimant's heart attack.

The medical records, as well as the claimant's testimony, reveal that the claimant suffered from high blood pressure and high cholesterol for which she was taking medication at the time of her heart attack. In addition, the claimant was diagnosed with pre-existing carotid artery disease. Finally, despite the claimant's testimony that she has not been on heart medication since her triple bypass in 1999, the claimant provided a history of taking an aspirin a day for her heart ever since her bypass. Claimant's cardiologist opined that stress of the event caused plaque to rupture and form a clot.

In my opinion, the claim is substantially similar to Couch v. Arkansas State Police, Full Commission opinion filed June 18, 1998 (E500890). In Couch, the claimant was involved in a high speed chase. The claimant's cardiologist in Couch opined that the stress from the emotionally charged chase was an aggravating factor and played a causal connection in the claimant's myocardial infarction. In addition, the evidence revealed that the claimant suffered from coronary artery disease. In finding that the claimant in Couch failed to prove by a preponderance of the evidence that his heart attack was compensable, the Commission concluded that the physical exertion or physical

activity involved in the chase was merely a causative factor which did not amount to and was not the equivalent of the major cause of the heart attack. The Full Commission found that the emotional stress and the claimant's pre-existing coronary artery disease were the major cause of the claimant's heart attack. Relying upon A.C.A. § 11-9-114(b) (2), the Commission further found that the preponderance of the evidence showed that the claimant's underlying coronary artery disease, not the high speed chase, was the major cause of the claimant's myocardial infarction.

Similarly, in the present case when faced with evidence that the claimant's heart attack was clearly precipitated by the emotional stress from the robbery, I find that pursuant to A.C.A. § 11-9-114(b) (2) the claimant has failed to prove by a preponderance of the evidence that major cause of her heart attack was an accident within the meaning of the workers' compensation statute. Therefore, I must respectfully dissent from the majority opinion.

KAREN H. MCKINNEY, Commissioner