

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F506856

LARRY GREER,
EMPLOYEE

CLAIMANT

ROBERTSON, INC.,
EMPLOYER

RESPONDENT

ST. PAUL TRAVELERS INS. CO.,
INSURANCE CARRIER

RESPONDENT

OPINION FILED AUGUST 8, 2006

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

Claimant appears pro se.

Respondents represented by the HONORABLE GUY ALTON WADE,
Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The respondents appeal an administrative law judge's
opinion filed February 13, 2006. The administrative law
judge found, among other things, that the claimant sustained
an injury arising out of and in the course of his employment
on May 23, 2005. After reviewing the entire record *de novo*,
the Full Commission reverses the opinion of the
administrative law judge. We find that the claimant did not

prove he sustained a compensable injury pursuant to Ark. Code Ann. §11-9-114.

I. HISTORY

Larry Greer, age 58, testified that he began working for Robertson, Inc. in about November 1984. Mr. Greer testified that he was a crane operator and general construction worker.

The claimant was admitted to Arkansas Methodist Medical Center in January 2002 after complaining of stomach pain and vomiting. The claimant reported at that time that he had undergone open heart surgery 15 months earlier. The claimant's reported medical history included heart disease and respiratory disease. An x-ray of the claimant's chest showed, "Obstructive pulmonary disease change. Post op sternotomy. No active infiltrate identified."

The claimant was discharged from the hospital on January 10, 2002 with the diagnosis: "1. Abdominal pain. 2. Coronary artery disease."

The parties stipulated that the employment relationship existed on or about May 25, 2005, which date was a Wednesday. The claimant testified that he "passed out" that

day while operating a farm tractor. The claimant testified that he began work at 7 a.m. and passed out approximately 15 to 20 minutes later. The administrative law judge examined the *pro se* claimant:

Q. I've got listed in my notes from the Prehearing Conference there's a claim for heat exhaustion?

A. True, on Monday. I was running a different piece of equipment and had run it a couple of hours and it was quite hot.

Q. Okay, what was the equipment you were running on Monday?

A. An excavator....It was an old excavator. It had no windows, no fan, no ventilation. The exhaust fumes, the heat, the stress - I'm a victim of COPD. I have emphysema. In situations - certain situations - I can perform my duties. But in stressful situations, as this one was, with somebody hounding you every five minutes, telling you to hurry up, let's go, let's do it, then it got to the point that I had, basically, a heat stroke. I asked for fans to go on this piece of equipment. I was denied. I asked to be placed on another piece of equipment so I could get some air, and was denied again. Later on in the afternoon, Mr. Cox come along and said we're gonna work another hour, and I was at the point at that time that I could not catch my breath even. I declined, but him being the superintendent on the job, he basically said that you can either do it or you can go to the house....So, I put up with it. I tried to stay the other hour and did so.

The claimant testified that he went home, showered, and went to bed. The claimant testified that he was "drained" the next morning but reported to work. The administrative law judge examined the claimant:

Q. Okay, so you reported to work at the usual time and you were placed on the air-conditioned tractor at that time?

A. Yes.

Q. Then what happened?

A. I drove the tractor for eight hours and it had been air-conditioned and I had to wear a coat. I opened the doors and everything, but I was freezing to death all day long. At noontime, I took a break....Anyway, they put me back on the tractor that afternoon and I'm not real sure, but I hit a pick-up that afternoon - a state employee's vehicle. But anyway, I went home that night after completing nine hours, and basically the same thing - no supper, to bed, and up the next morning and tried to go again. And the next day is when I blacked out after about 15 to 20 minutes, and from that point, I was in ICU and don't remember nothing until the next day....

Q. In terms of - so the actual exposure occurred about two days before you actually passed out, right?

A. Right.

Q. The May 25th date is the date that you actually passed out?

A. Right.

Q. And two days before that is when you were subjected to the heat?

A. Right. And again, the body just took so much, it couldn't hold up to it any longer.

The respondents' attorney cross-examined the claimant:

Q. Now, the week before, you had been running machinery and working pretty much even more than your regular hours, correct?

A. Yes....

Q. The week before, you didn't have any problems breathing, or any problems performing the job, did you, sir?

A. I was by myself on a particular job, yes, sir.

Q. Okay.

A. There was no stress or strain - nobody there to aggravate me....

Q. Now, do you remember what the temperature was on this week - this Monday, Tuesday and Wednesday?

A. That particular week, it was probably in the mid-80's.

Q. Okay.

A. But, you factor in the heat from that piece of machinery that I was running, which had no windows, not even a hood on the machine, the exhaust fumes, and down there in the river bottoms, no air ventilation, no air circulation.

Q. You've run that machine before, though, hadn't you, sir?

A. Not if I didn't have to.

Q. Okay. Not if you could beg out?

A. Not if I could get out of it.

The record indicates that the claimant sought emergency treatment on the morning of May 25, 2005. It was noted that the claimant had complained of chest pain intermittently for the previous two weeks. The claimant was admitted to the Medical Center with a diagnosis of shortness of breath and history of chronic obstructive pulmonary disease.

An EKG Report on May 25, 2005 confirmed a sinus tachycardia; biatrial enlargement; rightward axis; pulmonary disease pattern; T wave abnormality, consider anterior ischemia; and abnormal ECG. The Opinion from an x-ray of the claimant's chest on May 25, 2005 was, "Post op sternotomy; borderline cardiomegaly; No active infiltrate identified. Chronic changes in the lungs."

Dr. Leonus L. Shedd reported on May 28, 2005:

This man was working with a construction company. The day prior to his admission, he became very hot and had to sit down. He felt like he could not go any further, but continued to work for one more hour. Then he did go home. The following morning he went back to work and apparently passed out while driving some type of construction machinery

or at least did not know what he was doing and bumped into other machinery. He was brought to the Emergency Room in respiratory failure, confused, lethargic, and breathing very shallow.

Dr. Shedd noted that the claimant's past medical history included "a long history of heart disease and COPD. He has had coronary artery bypass grafting." The claimant had been electrocuted in 1970. The claimant had undergone coronary artery bypass grafting in October 2000. It was noted that the claimant had "smoked up to 3 packs of cigarettes per day in the past." Dr. Shedd noted that the claimant was "breathing very shallow and has tachypnea and tachycardia....He is on oxygen, but has some duskeness in his fingernails."

Dr. Shedd gave the following impression:

1. Respiratory failure
2. Chronic Obstructive Pulmonary Disease, Acute Exacerbation
3. ASHD
 - a. Coronary Artery Bypass Grafting
 - b. Past History of Congestive Heart Failure
 - c. Past History of Angina

Dr. Shedd's treatment recommendations to the claimant on May 28, 2005 included the following: "1. I want you to lay around the house for the next 3 days. Stay out of the

heat and do not be doing any work or anything that would exhaust you.”

The claimant testified that he tried to return to work after about one week but that his employment was terminated.

A pre-hearing order was filed on September 27, 2005. The claimant contended that he sustained an accident on May 25, 2005. The respondents contended that the claimant’s “complaint of lung and/or heat prostration injuries are a preexisting condition for which respondents are not responsible. Claimant’s complaints also do not meet the specific workers’ compensation definitions regarding heart, lung and pulmonary injuries in order to be compensable.”

The administrative law judge found, in pertinent part:

4. On May 23, 2005, the claimant sustained an injury arising out of and in the course of his employment, specifically heat prostration/exhaustion resulting in respiratory failure and aggravation of his pre-existing COPD, requiring medical treatment. The work-related heat prostration/exhaustion was the major cause of the claimant’s injury and need for medical treatment, and was an unusual and unpredicted incident within the meaning of Ark. Code Ann. §11-9-114.
5. The claimant was temporarily totally disabled for the period beginning May 25, 2005, and continuing through the end of his healing period.

6. The respondent shall pay all reasonable hospital and medical expenses arising out of the injury of May 23, 2005.

The respondents appeal to the Full Commission.

II. ADJUDICATION

Ark. Code Ann. §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, alternately, that some unusual and 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.

The administrative law judge found in the present matter, "On May 23, 2005, the claimant sustained an injury arising out of and in the course of his employment, specifically heat prostration/exhaustion resulting in respiratory failure and aggravation of his pre-existing

COPD, requiring medical treatment. The work-related heat prostration/exhaustion was the major cause of the claimant's injury and need for medical treatment, and was an unusual and unpredicted incident within the meaning of Ark. Code Ann. §11-9-114."

The Full Commission finds that the claimant did not prove he sustained a compensable injury pursuant to Ark. Code Ann. §11-9-114. The record indicates that the claimant underwent open heart surgery in about 2000, and that he was diagnosed with coronary artery disease no later than January 2002. The claimant contended that he sustained a work-related accident on May 25, 2005. The claimant testified that his symptoms actually began on or about May 23, 2005 while running an excavator vehicle. The claimant testified that the excavator was windowless and hot with no ventilation. The claimant testified that he suffered a "heat stroke" as a result of "the stress ... somebody hounding you every five minutes, telling you to hurry up, let's go let's do it." Nevertheless, Ark. Code Ann. §11-9-114(b) (2) explicitly provides that "Stress, physical or mental, shall not be considered in determining whether the

employee or claimant has met his or her burden of proof.” The preponderance of evidence does not demonstrate that the claimant’s work activities in May 2005 were extraordinary and unusual in comparison to the claimant’s usual work for the respondent-employer.

The claimant’s testimony indicated that he worked in an air-conditioned tractor on Tuesday, May 24, 2005. The claimant testified that he then “passed out” on May 25, 2005 while operating the tractor. A medical report from May 25, 2005 indicated that the claimant’s chest pain did not arise on May 23, 2005 or May 25, 2005. Instead, the claimant had complained of chest pain intermittently for the previous two weeks. There were several abnormalities shown on the diagnostic testing performed on May 25, 2005, including sinus tachycardia; biatrial enlargement; rightward axis; pulmonary disease pattern; T wave abnormality; and abnormal ECG. However, the preponderance of evidence does not demonstrate that these conditions were causally related to the alleged workplace events occurring May 23-25, 2005.

The Full Commission recognizes Dr. Shedd’s diagnosis of respiratory failure and ASHD, or atherosclerotic heart

disease. We also note Dr. Shedd's diagnosis of "Chronic Obstructive Heart Disease, Acute Exacerbation." Nevertheless, Dr. Shedd did not expressly causally relate these conditions to a workplace accident. Nor does the evidence demonstrate that an accident was the major cause of these conditions diagnosed by Dr. Shedd. The record does not show that an accident was the major cause of the claimant's chronic obstructive pulmonary disease.

Based on our *de novo* review of the entire record, the Full Commission finds that the claimant did not prove he sustained a compensable injury pursuant to Ark. Code Ann. §11-9-114. The Full Commission therefore reverses the opinion of the administrative law judge, and this claim is denied and dismissed.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Turner dissents.