

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F111004

RONALD KINSWORTHY,
EMPLOYEE

CLAIMANT

JIM CLINE LOGGING,
EMPLOYER

RESPONDENT

AMERICAN INTERSTATE INSURANCE COMPANY,
INSURANCE CARRIER

RESPONDENT

OPINION FILED JANUARY 19, 2007

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

Claimant represented by the HONORABLE RANDOLPH SHOCK,
Attorney at Law, Fort Smith, Arkansas.

Respondents represented by the HONORABLE MICHAEL RYBURN,
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 July 28, 2006. 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 of this claim.
2. On September 24, 2001, the relationship of employee-employer-carrier existed between the parties.
3. On September 24, 2001, the claimant earned an average weekly wage sufficient to entitle him to weekly compensation benefits of \$300.00

for total disability and \$225.00 for permanent partial disability.

4. On September 24, 2001, the claimant sustained a compensable injury to his left leg.

5. On September 24, 2001, the claimant sustained a compensable cardiac injury, that was a result of a compensable consequence or complication of the compensable injury to his left leg. This compensable cardiac injury resulted in symptoms of arrhythmia and shortness of breath.

6. There is no dispute over liability for the medical expenses incurred for medical services rendered to the claimant directly for his compensable leg injury and all such expenses have been paid.

7. The medical services rendered to the claimant for the evaluation and treatment of his cardiac arrhythmia and shortness of breath by and at the direction of the physicians at St. Edwards Mercy Medical Center, Dr. Michael Westbrook, and Dr. Dario Espina represent reasonably necessary medical services for the claimant's compensable cardiac injury. The expense of these services, subject to the Commission's medical fee schedule, is the liability of the respondents herein. However, any medical services rendered to the claimant by and at the direction of Dr. Westbrook and Dr. Espina for cardiac difficulties, unrelated to the claimant's symptoms of arrhythmia and shortness of breath, do not represent reasonably necessary medical services for the claimant's compensable cardiac injury, but are related to or necessitated by his various non compensable actual and potential cardiac conditions.

8. The claimant is entitled to additional temporary total disability benefits for his compensable cardiac injury for the period beginning November 1, 2002 and continuing through August 22, 2003. Specifically, the

claimant has proven by the greater weight of the credible evidence that during this period he continued within his healing period from the effects of his compensable cardiac injury and also continued to be rendered totally disabled from performing all forms of regular gainful employment as a result of this injury. The claimant failed to prove by the greater weight of the credible evidence that he was totally disabled from performing regular gainful employment, as a result of the effects of this compensable injury, prior to November 1, 2002. The claimant also failed to prove that he continued within his healing period from the effects of his compensable cardiac injury after August 22, 2003.

9. The claimant has failed to prove by the greater weight of the credible evidence that his death on May 30, 2005, was causally related to his prior compensable cardiac injury or any other compensable injuries sustained in the employment related accident of September 24, 2001.

10. The claimant has failed to prove that he is entitled to additional temporary total disability benefits for his compensable left leg injury after September of 2002. Specifically, the greater weight of the credible evidence presented establishes that the claimant returned to work on February 8, 2002, and that his subsequent failure or inability to continue this employment was in no way caused by his compensable left leg injury.

11. None of the present claims for additional benefits are barred by the provisions of Ark. Code Ann. § 11-9-702(b). All such claims for additional benefits were made within one year from the last payment of compensation, as required by this subsection.

12. The respondents have denied the occurrence of any compensable cardiac injury and have controverted the claimant's

entitlement to any and all benefits attributable to such an injury.

13. A reasonable fee for the claimant's attorney is the maximum statutory attorney's fee on the additional temporary total disability benefits herein award (i.e. from November 1, 2002 through August 22, 2003).

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 July 28, 2006 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

PHILIP A. HOOD, Commissioner

Commissioner McKinney dissents.

DISSENTING OPINION

I must respectfully dissent from the majority's opinion finding that the claimant sustained a compensable cardiac injury that was a compensable consequence or complication of the claimant's admittedly compensable injury to his left leg. In my opinion, the claimant has failed to prove by a preponderance of the

evidence that his heart problems were related to his admittedly compensable injury. In my opinion, there is no causal relationship between the broken leg and the claimant's heart condition.

Ark. Code Ann. § 11-9-102(4) (A) (i) (Repl. 2002) defines "compensable injury" as "[a]n accidental injury causing internal or external physical harm to the body ... arising out of and in the course of employment and which requires medical services or results in disability or death. An injury is 'accidental' only if it is caused by a specific incident and is identifiable by time and place of occurrence." Wal-Mart Stores, Inc. v. Westbrook, 77 Ark. App. 167, 72 S.W.3d 889 (2002). The phrase "arising out of the employment refers to the origin or cause of the accident," so the employee was required to show that a causal connection existed between the injury and his employment. Gerber Products v. McDonald, 15 Ark. App. 226, 691 S.W.2d 879 (1985).

Objective medical evidence, while necessary to establish the existence and extent of an injury, is not essential to establish a causal relationship between the injury and the work related accident. Wal-Mart Stores, Inc. v. VanWagner, 337 Ark. App. 443, 990 S.W.2d 522 (1999). Except in the most obvious cases where causation

is established through common sense observation and deduction, the existence of a causal relationship may require the assistance of expert medical evidence. John Cotton v. Ball & Prier, Full Commission Opinion, September 23, 1997 (E512437); Billy Wayne Jetter v. B & R McGinty Mechanical Co., Full Commission Opinion, March 6, 1997 (E208256), Affirmed May 6, 1998; Ortho O. Wells v. Armstrong Rubber Co., Full Commission Opinion, April 14, 1997 (D100998); and Carolyn Jackson v. Bosley Construction, Full Commission Opinion, March 6, 1997 (E009401). "To be sure, there will be circumstances where medical evidence will be necessary to establish that a particular injury resulted from a work-related incident but not in every case." Van Wagner, supra.

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, 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.

In my opinion, it is conjecture and speculation to conclude that the claimant's leg injury was the cause of the claimant's heart problems. The record is void of any objective medical evidence. The record shows that one doctor opined that with a lower extremity injury there was a possibility of a pulmonary embolism. The claimant suffered from atrial fibrillation and was diagnosed with that after the compensable injury. The claimant had a CT scan of the chest with contrast and it showed a normal chest. The findings specifically state that there was no pulmonary emboli identified. A second scan was performed on October 8, 2001, and again showed no evidence of acute pulmonary embolis. Dr. Dario Espina stated in his October 14, 2001, report, that, based upon his findings he was not able to establish why the initial doppler study revealed a mild left atrial dilatation. Dr. Espina speculated in one report that the claimant may have had a small pulmonary emboli that was not diagnosed by the CT scan. However, the law requires that there be objective

medical findings to substantiate an injury. The only connection that was established was based upon a possibility. Conjecture and speculation, even if plausible, cannot take the place of proof. Ark. Dept. of Correction v. Glover, 35 Ark. App. 32, 812 S.W.2d 692 (1991). Dena Construction Co. v. Herndon, 264 Ark. 791, 575 S.W.2d 155 (1979). Arkansas Methodist Hospital v. Adams, 43 Ark. App. 1, 858 S.W.2d 125 (1993). No doctor has identified anything that was the result of the leg fracture that had a causal connection with the heart problem.

The evidence demonstrates that the claimant had hypertension that preexisted the accident, high cholesterol, was obese, as well as having a history of smoking cigarettes. He also had a history of alcohol abuse. The medical records show that the claimant's family had a history of hypertension and heart disease. The initial report from Dr. Espina reflected his opinion on the cause of the condition and it stated that his diagnosis was a newly recognize arrhythmia, atrial fibrillation presumed, perhaps due to alcohol and tobacco use, perhaps due to ASHD. His second impression was ASHD due to risk factors such as obesity, family history, tobacco, and alcohol use. Throughout all of his

reports Dr. Espina mentioned the claimant's obesity, low HDL, and his depressions. None of these reports mention anything about the leg injury.

The majority relies on an opinion of Dr. Espina that he issued in a letter dated January 26, 2006, where he stated it was opinion within a reasonable degree of medical certainty that the claimant's leg fracture in September of 2001, was the **pivotal** event that caused the claimant's heart problems. [Emphasis added] Dr. Espina did not state that it was the leg fracture that caused the heart problem. It is obvious that the claimant had all the risk factors for having a heart condition. A pivotal event does not mean that the condition was caused by the leg injury.

Therefore, after conducting a de novo review of the record, I cannot find that the claimant can prove a causal connection between his heart problems and his compensable leg injury. Therefore, for all the reasons set forth herein, I must respectfully dissent from the majority's opinion and award of benefits.

KAREN H. MCKINNEY, Commissioner