

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F513545

JASON G. MORRIS, EMPLOYEE	CLAIMANT
YOUNG WELL SERVICE, INC., EMPLOYER	RESPONDENT
COMMERCE & INDUSTRY INSURANCE, INSURANCE CARRIER	RESPONDENT

OPINION FILED APRIL 17, 2007

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

Claimant represented by the HONORABLE NELSON V. SHAW, Attorney at Law, Texarkana, Texas.

Respondents represented by the HONORABLE JARROD PARRISH, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed in part and reversed in part.

OPINION AND ORDER

The respondents appeal an administrative law judge's opinion filed September 1, 2006. The administrative law judge found, among other things, that the claimant proved he suffered a compensable injury to his spleen. After reviewing the entire record *de novo*, the Full Commission affirms the administrative law judge's finding that the claimant sustained a compensable injury. However, we find

that the claimant did not notify the respondents of the injury until December 27, 2005. Pursuant to Ark. Code Ann. §11-9-701, the Full Commission finds that the claimant proved he was entitled to reasonably necessary medical treatment provided on and after December 27, 2005. The claimant proved he was entitled to temporary total disability compensation from December 27, 2005 through January 30, 2006.

I. HISTORY

Jason Glen Morris, age 35, testified that he began working as a derrickman for Young Well Service in the mid-1990's. The parties stipulated that the employment relationship existed at all relevant times, including November 14, 2005. The claimant testified:

Q. Explain to the Commission what a derrick is. What is that?

A. It's a steel structure, like a tower that just scopes up off the rig. It's about 90 foot up in the air.

Q. And what is the purpose of that being so high?

A. So that you can pull the rods and the tubing up out of the ground....

Q. Now, your duties as a derrickman, do they call for you to stay on the ground or were you up in the air or both?

A. Both....

Q. On the day in question, how far off the ground were you?

A. Somewhere around seventy-five foot....

Q. And once you got up to that position on the derrick, what were you doing? Explain it to a layperson.

A. You have a rod transfer, which is a metal device that slips onto the rod, that picks it up and lets it down in order to make the rod up or unmake it and hang it back in the derrick.

Q. And the purpose of all that is what? Why are you doing that?

A. Repairing the well....

Q. Describe how the accident occurred, how you were injured.

A. We was going in the hole with the rods. I had got a rod out of the fingers and set it down, they had made it up. The operator picked up on the block and before I could get the transfer off, he come down and the cable is so long. When it hit the end of that cable, the transfer shot off and swung around and hit me in the back....

Q. Who was this operator that you are talking about?

A. Ricky Magness....

Q. So when this rod transfer hit you, what part of your back did it hit you in?

A. About middle-ways on the left side of the back.

Q. Did you make any effort to move?

A. Yes, sir. I ducked down in the basket....

Q. When did you first become aware that this part was loose and might hit you?

A. When it flew by my head. When it flew by my head I ducked down to try to keep it from hitting me but it swung around and hit me in the back....

Q. After it hit you, what happened?

A. It knocked the breath out of me and Ricky hollered up and asked me if I was all right. I told him that I thought I was. We was almost through with the job so I went on and finished it.

Q. Describe if you would how that felt, this rod transfer hitting you in the back. How did that feel?

A. It was a sharp pain, a sharp blow to the back....

The claimant testified that he did not immediately seek medical treatment, because "I thought it was just bruised and sore and I figured that I would just work it out." The claimant testified that he continued to perform his regular daily job duties.

Ricky Magness testified that he had been the claimant's supervisor. Mr. Magness testified for the respondents:

Q. Did Mr. Morris ever personally tell you that he had been hurt on the rig?

A. No, sir.

Q. Did you see him get hit with the rod transfer at any time when he was working with you?

A. I remember the rod transfer popped off but as far as seeing it hit him in the back, I did not

see that happen....I stopped the rig right then and asked him if everything was all right and he said, yes, sir, go ahead....

Q. Did he at any point during that day tell you that he had been hit with that rod transfer that had popped off?

A. No, sir.

About a week later, testified the claimant, "I collapsed in the floor" at home. "I fell in the floor and I couldn't walk," the claimant testified. The claimant sought emergency treatment at Medical Park Hospital, Hope, Ark., on November 22, 2005. The claimant complained of abdominal pain and vomiting which had begun three to four hours earlier. The Emergency Physician Record indicated that the claimant also complained of back pain, which had begun as the result of a traumatic injury occurring one week earlier. On the PAST HX section of the Emergency Physician Record, it was written, "substance abuse?" The Clinical Impression was "Abdominal Pain - acute."

The record contains a Medical Park Hospital Lab report dated November 23, 2005. The report indicated that a urine specimen was collected from the claimant on November 23, 2005. The report indicated that the claimant tested positive for THC, Amphetamine, and Methamphetamine.

The claimant denied at hearing that he had been using any drugs or was intoxicated on the date of the alleged accident, November 14, 2005. The respondents' attorney cross-examined the claimant:

Q. When you went to the ER on November 22nd or 23rd of 2005, and the surgery actually took place on the 23rd, you tested positive for marijuana, amphetamines and methamphetamines. Would you agree with me that it is unsafe to be at work with any one of those three in your system?

A. I was not at work with any of them in my system....

Q. If you had gone to the doctor on the 14th when you say the transfer had hit you, would you have been able to pass the drug test?

A. Yes, sir....

Q. What day of the week did you do the drugs after the 14th?

A. I can't remember. It was about the middle of the week sometime, about the middle of that time....It was a few days before I got operated on.

Q. You were doing them at home or at a party or what?

A. At a party. And I don't know that I had done but two....

Ricky Magness testified for the respondents:

Q. Were you aware that he tested positive for illegal drugs when he went to the emergency room?

A. No, I wasn't.

The claimant's attorney cross-examined Mr. Magness:

Q. On November 14, 2005, was he doing his job?

A. I'd say he was, yes.

Q. And doing a good job as far as you were concerned?

A. He was doing okay. I didn't have no complaints....

Q. And on the 14th, did he appear intoxicated on that day to you?

A. I don't think so. I can't recall.

Q. Have you ever been around an intoxicated person before?

A. Oh, yeah.

Q. You kind of know what they look like?

A. Right.

Dr. John A. Solomon reported on November 23, 2005:

This 34 year-old male is on an oil drilling crew. He sustained blunt trauma to the left back about one week ago. He was able to continue to work, though had the breath knocked away. At approximately six or seven last evening, he had an acute onset of abdominal pain and what may in retrospect have been a syncopal episode. His mom describes that he fell back and became clammy but on arrival at the hospital in Hope was hemodynamically stable....

Dr. Solomon's examination included the claimant's abdomen: "Slightly distended and diffusely tender. A scar from right inguinal hernia repair." Dr. Solomon gave the

following impression: "Blunt trauma to the abdomen with delayed splenic rupture and associated anemia. Because of his anemia and degree of peritoneum, I think he requires an operation and will proceed with splenectomy."

It was handwritten on a Pre-Anesthetic Evaluation, dated November 23, 2005, that the claimant was "+ illegal drug use."

Dr. Solomon performed an exploratory laparotomy and splenectomy on November 23, 2005:

This patient was in an oilfield accident last week. He had the acute onset of abdominal pain and computerized tomography in Hope showed rupture of his spleen with hemoperitoneum....

The spleen had a rupture at the inferior pole. It appeared to be somewhat enlarged and then there was another small tear. I had really anticipated more of a subcapsular hematoma. Because the patient had had delayed bleed I felt that splenic salvage was not appropriate, therefore we elected splenectomy....

On or about December 21, 2005, Dr. Solomon signed a form which included the following language: "5. The injuries of **Jason Morris** are consistent with the job related injury as described by him to me during the taking of her history. It is my opinion that the injury is the sole cause of **Mr. Morris'** medical problems and complaints as relates to his spleen."

A First Report Of Injury Or Illness was prepared on January 19, 2006; the First Report indicated that an injury occurred on November 14, 2005, and that the employer was notified on December 27, 2005.

Dr. Solomon returned the claimant to regular work on January 30, 2006.

A pre-hearing order was filed on March 15, 2006. The claimant contended that he "suffered a compensable injury to his spleen on 11/14/05 and that he was not intoxicated at that time." The respondents contended that the claimant did not sustain a compensable injury. The respondents contended that there "was no notice of an alleged injury until 12/27/05; in the event compensability is found, respondents contend that they should not be responsible for benefits until actual notice was received. Respondents affirmatively raise the intoxication defense."

The parties agreed to litigate the following issues: "1. Compensability. 2. If compensability is overcome, whether the claimant is entitled to associated TTD, medical benefits, and attorney's fees. 3. Notice defense. 4. Intoxication defense."

The parties deposed Dr. Solomon on April 19, 2006. The respondents' attorney questioned Dr. Solomon:

Q. As far as the location of the spleen in the body, where is it located?

A. It's in the abdominal cavity but it's near the back on the left side....

Q. Do you know which side of the body Mr. Morris was struck on or hit on when he was on the job?

A. My information was it was on the left side of the back area.

Q. Is there a possibility that a person can suffer a spleen rupture, I guess you would say idiopathically. No trauma or anything associated with it?

A. I think theoretically that would be possible. I think, I have seen patients that did not have a history of trauma that had a spleen injury. You know, it's certainly possible that they had trauma that they thought was trivial and had even forgotten about.

Q. Okay. Is there ever any kind of exis (sic) process or any other explanation like that besides trauma that can cause a rupture?

A. Very, very rare. You can have an infection of the spleen but those cases are very rare. I don't know that I have ever seen any.

Q. As far as from your experience in doing surgeries, operations, what is the most common cause of the spleen rupturing or injury to the spleen?

A. Blunt trauma probably caused by car wrecks is one of the more common. Athletic events. Agricultural accidents....

Q. The actual site of the rupture on the spleen, what position on the spleen was it, as far as side, top, bottom?

A. In his case, he had what I would call a, what's termed a subcapsular hematoma, in other words he had an injury to the spleen and blood seeped out of the spleen itself but was probably contained within the capsule, which is kind of like the outside lining of the spleen, and at some point that capsule or outer lining ruptured and began to leak. And so, it was really hard to pinpoint exactly where the initial injury of the spleen was because, again, the spleen was injured, it bled underneath the outside lining and then finally that outside lining burst and resulted in blood in his abdominal cavity.

Q. Okay. In your surgical report, you simply stated that you expected to see a hematoma but you didn't see one. Did you see remnants of one?

A. Yes. Where the blood had leaked out from the capsule....

Q. I believe in the last visit to your office, or after the last visit, you issued an opinion discussing the fact that he had a failed drug test when he showed up at the ER. Do you recall authoring that?

A. He had a positive drug screen and I honestly don't know whether that was at this hospital or the prior hospital.

Q. Alright. I believe it was at the hospital in Hope. Medical Park. It's right here on top, in your letter to Mr. Shaw you state, I have no information to comment on whether or not his injuries happened while working in an intoxicated state or under the influence of drugs. Is that still your (sic) opinion?

A. Yes....a positive drug screen after the injury seemed to kind of be irrelevant to the injury itself....

Q. Is there any way for you to know definitively, one way or the other, whether he had taken the

drugs he tested positive for on the day of the injury?

A. No.

The claimant's attorney questioned Dr. Solomon:

Q. What was your diagnosis of Mr. Morris?

A. Blunt trauma with spleen injury and hemo-peritonea.

Q. What is blunt trauma?

A. Blunt force against the abdominal cavity.

Q. Do you have an opinion of whether Mr. Morris' related spleen rupture was consistent with his job related injury as he related it to you?

A. That's the history I got....

Q. After operating on Mr. Morris, did your diagnosis change?

A. No....

Q. Do you have any information or evidence whatsoever that Mr. Morris was under the influence of any type of illegal drug at the time of the accident?

A. I have no knowledge of that.

A hearing was held on June 6, 2006. Phil Keith testified that he was a toolpusher for the respondent-employer and that he had supervised the claimant and Ricky Magness. Phil Keith testified for the respondents:

Q. Did you receive any reports of any injuries on a rig on November 14, 2005?

A. No.

Q. Okay. Do you know when the first time was that you received notice that Mr. Morris was alleging that he had been hurt?

A. His mother called me on the morning of - let me see here - 11-23, that Jason had been to the hospital and had had his spleen operated on. That's the first that I heard about it....

Q. Did she say anything about him being hurt at work or anything happening at work?

A. No.

Q. Do you know when the first time was that you heard that he was saying that he had been hurt on the rig?

A. It was several days after that. I can't tell you the specific date but it was several days after that....

Q. And that was the 23rd?

A. That was the 23rd of November.

The administrative law judge found, in pertinent part:

2) Claimant has met his burden of proving by a preponderance of the evidence that he suffered a compensable injury to his spleen while employed by the respondents.

3) Claimant is entitled to TTD benefits beginning November 23, 2005 and continuing through January 30, 2006.

4) Respondents notice defense is without merit. Any delay in notice of the compensable injury was justified pursuant to A.C.A. §11-9-701(b) (1) (B) and A.C.A. §11-9-701(b) (1) (C).

5) Claimant sustained his burden of proving ... that he is entitled to reasonable necessary medical benefits in connection with his injury,

including, but not limited to the splenectomy operation of 11/23/05.

6) The claimant has proven by a preponderance of the evidence that the drugs contained in his 11/23/05 drug screen (RX-2, pg. 4) did not substantially occasion the compensable injury or accident of November 14, 2005.

The respondents appeal to the Full Commission.

II. ADJUDICATION

A. Compensability

Ark. Code Ann. §11-9-102(4) (A) defines "compensable injury":

(i) An 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[.]

(B) "Compensable injury" does not include:

(iv) (a) Injury where the accident was substantially occasioned by the use of alcohol, illegal drugs, or prescription drugs used in contravention of physician's orders.

(b) The presence of alcohol, illegal drugs, or prescription drugs used in contravention of a physician's orders shall create a rebuttable presumption that the injury or accident was substantially occasioned by the use of alcohol, illegal drugs, or prescription drugs used in contravention of physician's orders.

(c) Every employee is deemed by his or her performance of services to have impliedly consented to reasonable and responsible testing by properly trained medical or law enforcement personnel for the presence of any of the aforementioned substances in the employee's body.

(d) An employee shall not be entitled to compensation unless it is proved by a preponderance of the evidence that the alcohol, illegal drugs, or prescription drugs utilized in contravention of the physician's orders did not substantially occasion the injury or accident.

A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. §11-9-102(4) (D). The claimant's burden shall be a preponderance of the evidence. Ark. Code Ann. §11-9-102(4) (E) (i). Medical opinions addressing compensability must be stated within a reasonable degree of medical certainty. Ark. Code Ann. §11-9-102(16) (B).

In the present matter, the administrative law judge found that the claimant suffered a compensable injury to his spleen. The Full Commission affirms this finding. The claimant had been employed with the respondents for approximately 10 years. The claimant testified that he was working on an oil derrick on November 14, 2005, when a rod transfer struck him in the middle left back. Although he did not witness the accident, Ricky Magness agreed that the rod transfer came loose and he stopped the rig. The subsequent medical records corroborate the claimant's testimony concerning the specific incident. On November 23, 2005, Dr. Solomon reported that the claimant had "sustained

blunt trauma to the left back about one week ago." Dr. Solomon performed an emergency splenectomy. Dr. Solomon's surgical report confirmed that the claimant's spleen had ruptured.

On December 21, 2005, Dr. Solomon signed an opinion indicating that his treatment was causally related to the accident as described by the claimant. Dr. Solomon testified at deposition that he had treated the claimant for "blunt force against the abdominal cavity." Dr. Solomon testified that his medical condition was causally related to the accidental injury.

The Full Commission finds that the claimant proved that he sustained an accidental injury on November 14, 2005, which injury caused physical harm to the claimant's body. The claimant proved that the accidental injury arose out of and in the course of employment and required medical services and resulted in disability. The accidental injury was caused by a specific incident identifiable by time and place of occurrence. The claimant established a compensable injury by medical evidence supported by objective findings, namely, the ruptured spleen as reported by Dr. Solomon. We therefore affirm the administrative law judge's finding, "Claimant has met his burden of proving by a preponderance

of the evidence that he suffered a compensable injury to his spleen while employed by the respondents."

The administrative law judge found, "The claimant has proven by a preponderance of the evidence that the drugs contained in his 11/23/05 drug screen (RX-2, pg. 4) did not substantially occasion the compensable injury or accident of November 14, 2005." The Full Commission affirms this finding. The Full Commission recognizes that a urine specimen taken from the claimant on November 23, 2005 was positive for illegal substances, that is, THC, amphetamine, and methamphetamine. The presence of these illegal drugs in the claimant's system created a rebuttable presumption that the accident was substantially occasioned by the use of illegal drugs. Ark. Code Ann. §11-9-102(4)(B)(iv)(b).

However, there is no probative evidence of record demonstrating that the oil rig incident on November 14, 2005 was in any way the result of illegal drug use by the claimant. The evidence shows that a rod transfer came loose from the derrick on November 14, 2005. Ricky Magness agreed that this mishap occurred and even stopped operations and asked the claimant if he was okay. Mr. Magness testified, "What happened was that the flange busted, you know." The record does not show that this circumstance was in any way

the result of any action by the claimant. We note that the claimant had the presence of mind to duck when he saw the rod transfer swinging toward him, although he was not able to prevent the accident. Mr. Magness credibly testified that the claimant did not appear to be intoxicated. Dr. Solomon did not think that drug use played any factor in the claimant's injury. This finding by the administrative law judge is affirmed.

B. Notice

Ark. Code Ann. §11-9-701 provides:

(a) (1) Unless an injury either renders the employee physically or mentally unable to do so, or is made known to the employer immediately after it occurs, the employee shall report the injury to the employer on a form prescribed or approved by the Workers' Compensation Commission and to a person or at a place specified by the employer, and the employer shall not be responsible for disability, medical, or other benefits prior to receipt of the employee's report of injury....

(3) The foregoing shall not apply when an employee requires emergency medical treatment outside the employer's normal business hours; however, in that event, the employee shall cause a report of the injury to be made to the employer on the employer's next regular business day.

(b) (1) Failure to give the notice shall not bar any claim:

(A) If the employer had knowledge of the injury or death;

(B) If the employee had no knowledge that the condition or disease arose out of and in the course of the employment; or

(C) If the commission excuses the failure on the grounds that for some satisfactory reason the notice could not be given....

The administrative law judge found in the present matter, "Respondents notice defense is without merit. Any delay in notice of the compensable injury was justified pursuant to A.C.A. §11-9-701(b) (1) (B) and A.C.A. §11-9-701(b) (1) (C)."

We reverse this finding. The Full Commission finds that the claimant did not notify the respondents of his injury until December 27, 2005, as reflected in the First Report Of Injury Or Illness. The evidence demonstrates that the respondents did not receive notice before December 27, 2005. The preponderance of evidence shows that there was some mishap involving the oil derrick on November 14, 2005. The claimant and Ricky Magness agreed that a rod transfer came loose. Although the claimant testified that he told Mr. Magness about an accidental injury, Mr. Magness credibly testified that the claimant did not report such an accident. The record supports Mr. Magness' account of events. The record demonstrates that the respondent-employer was not made aware of the alleged injury until after the claimant was released from the hospital for his surgery. The evidence does not show that the employer had any knowledge

of the accidental injury before December 27, 2005. The claimant was aware on November 14, 2005 that the had sustained a work-related injury, so the claimant cannot rely on Ark. Code Ann. §11-9-701(b)(1)(B) or any other statutory provision to excuse the lack of notice.

Based on our *de novo* review of the entire record, the Full Commission affirms in part and reverses in part the decision of the administrative law judge. The Full Commission finds that the claimant proved he sustained a compensable injury on November 14, 2005. The claimant rebutted the statutory presumption that the accident was substantially occasioned by the use of illegal drugs. However, the claimant did not notify the respondents of the injury until December 27, 2005. Pursuant to Ark. Code Ann. §11-9-701, the claimant proved that he was entitled to reasonably necessary medical treatment provided on and after December 27, 2005. The claimant proved that he remained within his healing period and was totally incapacitated to earn wages from November 23, 2005 through January 30, 2006. Pursuant to Ark. Code Ann. §11-9-701, the claimant proved that he was entitled to temporary total disability compensation from December 27, 2005 through January 30, 2006. The claimant's attorney is entitled to fees for legal

services in accordance with Ark. Code Ann. §11-9-715 (Repl. 2002). For prevailing in part on appeal, the claimant's attorney is entitled to an additional fee of five hundred dollars (\$500), pursuant to Ark. Code Ann. §11-9-715(b) (2) (Repl. 2002).

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Hood concurs in part and dissents in part.

CONCURRING & DISSENTING OPINION

I must respectfully concur in part and dissent in part from the principal opinion. Specifically, I concur with the finding that the claimant suffered a compensable injury which arose out of and in the course of employment. I dissent, however, from the finding that the claimant did not give notice of his injury to Respondent until December 27, 2005, thereby precluding the claimant from receiving benefits before December 27, 2005.

_____After a de novo review of the record, I find that the claimant provided notice to the Respondent and is entitled

to temporary total disability and medical benefits from November 23, 2005 until January 30, 2006 as awarded to him by the Administrative Law Judge.

_____On November 14, 2005 the claimant was employed at Young Well Service and working on an oil well when he sustained a compensable injury. Claimant testified that he was on a derrick, seventy-five feet above ground, when he was struck in the back by a steel transfer rod. Claimant's immediate supervisor and the operator of the transfer rod, Ricky Magness, asked the claimant if he was all right. The claimant testified that he told Mr. Magness that he thought that he was all right, but that he just had the breath knocked out of him. Despite the accident, the claimant finished his shift. Claimant testified that he and Mr. Magness even spoke of the accident on the way home that evening. Claimant also testified that even though he was sore, he kept working for the next few days. On November 23, 2005 the claimant was taken to the emergency room, where he was diagnosed as having a delayed ruptured spleen, for which a splenectomy was required. Dr. Solomon, the claimant's physician, testified that the claimant's injuries were consistent with the claimant's description of the accident. Dr. Solomon also testified that the claimant had a

subcapsular hematoma, which means that after the accident, blood seeped out of the spleen, but was contained in the capsule or outer lining of the spleen. At some point, that capsule ruptured and began to leak, causing the claimant to experience severe pain and pass out.

Claimant testified that his mother called his employer on the day of his surgery to notify them of the splenectomy. Phil Keith, a supervisor for Respondents, testified that he received the phone call from the claimant's mother. Mr. Magness testified that after the surgery, he went to the claimant's mother's house, where he and the claimant spoke of the accident. The Respondents contend, however, that they were not notified of the injury until December 27, 2005.

The Majority argues that the claimant did in fact sustain a compensable injury, but that he did not notify his employer of the injury until December 27, 2005. I must reject the Majority's view that the claimant did not notify his employer until December 27, 2005.

First and Foremost, I find the Majority fails to properly acknowledge the AR-C Form dated December 19, 2005. As a matter of law, the claimant gave notice to the respondents at that time and should have been given benefits for that time period.

The Majority clearly errs in its finding that the Respondents were not notified of the injury until December 27, 2005. According to Ark. Code Ann. § 11-9-701(a)(1),

Unless an injury either renders the employee physically or mentally unable to do so, or is made known to the employer immediately after it occurs, the employee shall report the injury to the employer on a form prescribed or approved by the Workers' Compensation Commission and to the person or at a place specified by the employer, and the employer shall not be responsible for disability, medical, or other benefits prior to the receipt of the employee's report of injury.

It has been well established by the Commission that the date that a claimant files an Arkansas Worker's Compensation Form-C, is the date that the claimant has provided notice to the employer. See Yearwood v. Wal-Mart Stores, Inc., Full Commission Opinion Filed June 17, 2003 (F201311). In fact, on December 19, 2005, the claimant filed an Arkansas Worker's Compensation Form-C. As such, the claimant satisfied the notice provision as of that time.

I also find that it is extremely unlikely that the claimant would have filed this form if the Respondent had not previously denied payment of the claimant's medical. The Respondent must have had notice in order to deny the claimant's request for benefits. It is simply not logical

that the claimant would have filed an AR-C form without having first been denied any benefits by the respondents. Furthermore, Mr. Magness testified that the claimant notified him of the accident while he visited the claimant at home, and he corroborated the claimant's testimony of asking him if he was all right immediately after the accident occurred. The Respondents, therefore, had notice of the accident and the injury on the date of the occurrence, and the claimant is entitled to receive temporary total disability and medical benefits from the date that he became unable to work.

The Respondents were notified several times that an accident had taken place. I find that pursuant to the language of Ark. Code Ann. § 11-9-701, the act of notifying the employer that an accident occurred was sufficient to constitute notice. It is undisputed that Ark. Code Ann. § 11-9-701(b) (1) (A) specifically provides that a claimant's failure to give notice of an injury is excused when an employer has knowledge of an injury. In the past this Commission has found that when an immediate supervisor is aware of a claimant's mishap, it is sufficient to attribute knowledge of the injury to respondent employer. Mavity v. Pulaski County Special School District, Full Commission

Opinion Filed May 13, 1997(E500231); Marie Fuller v. Hartmarx Corp., Full Commission Opinion Filed December 1, 1992 (E118573 & E118574).

The first time that the Respondents were notified occurred immediately after the accident, when Claimant notified Mr. Magness. Claimant testified that Mr. Magness asked him if he was all right, and that he told Mr. Magness that he was all right, but that he just had the breath knocked out of him. In fact, Mr. Magness testified that he did ask the claimant if everything was all right. Also, Mr. Magness was the person in control of the device carrying the steel transfer rod, which hit the claimant in the back. Mr. Magness, therefore, had actual knowledge of the accident at the time of its occurrence.

The Majority argues that Mr. Magness credibly testified that the claimant did not report such an accident. Yet the testimony of both the claimant and Mr. Magness is sufficient evidence that Mr. Magness was aware of the accident and the claimant being hit, or else he would not have asked the claimant if he was all right. Furthermore, the claimant informed the emergency room that he thought that at the time of the accident, he just had the breath knocked out of him. Dr. Solomon testified that the claimant most certainly could

have felt this way, due to the nature of the delayed rupture. Certainly, the claimant was not privy to Dr. Solomon's knowledge when he went to the emergency room, yet he still reported that he had the breath knocked out of him, thereby bolstering his credibility. As such, I give more weight to the testimony of the claimant.

The second time that the claimant notified Mr. Magness of the accident occurred immediately after their shift ended, when Mr. Magness gave the claimant a ride home from work. The claimant testified that while he was riding in Mr. Magness's truck, they talked about the accident, and Mr. Magness told the claimant that he was sorry and that he should have been paying more attention. While it is unclear if the claimant relayed that he was sore, it is evident that Mr. Magness was aware that the claimant had been hit, which is enough to show that notice was provided.

The third time that the claimant notified Mr. Magness of the accident was soon after the claimant's surgery. Mr. Magness testified that after the claimant's surgery, he went to the claimant's mother's home, where the claimant was recovering, to return the claimant's work boots. Mr. Magness testified that during his visit, the claimant told him that he had been injured in the accident on November 14, 2005.

Clearly, Mr. Magness's own testimony proves that he had actual knowledge of the accident. It is interesting that even though Mr. Magness was notified by claimant on three separate occasions, Mr. Magness did not follow procedure in reporting the incident or having the claimant to fill out any forms.

The Majority's next argument is that the claimant did not comply with Ark. Code Ann. § 11-9-701 in reporting his injury. The Majority argues that even if the claimant sustained a compensable injury, he failed to give immediate notice in that he did not immediately relay his injury to his employer, and therefore, his claim should be barred until notice was formally provided. The Commission has observed, however, that "subjective beliefs and lack of understanding" if reasonable under the circumstances, appear to be exactly the type of situation which excuse the failure to give notice under Ark. Code. Ann. § 11-9-701(b)(1)(B). See, Sherry v. McDonald, Full Commission Opinion filed August 19, 1994, (E115727).

I find that the claimant's delay in filing an official claim should not bar him from receiving benefits. Claimant testified that he remained sore after the accident, but he continued to work until his spleen was removed. Dr. Solomon

explained that the claimant had suffered a delayed rupture of the spleen. He also testified that the claimant likely had an onset of symptoms due to a clot rupturing, thereby causing an immediate need for treatment. Furthermore, Dr. Solomon testified that the claimant's injury was consistent with the trauma that he had sustained.

As Dr. Solomon's opinion is consistent with the claimant's testimony regarding his symptoms, it is evident that he had good cause for delay in filing an official claim. In fact, in the past, the Commission has ruled that a delay in reporting an injury is still sufficient to satisfy the notice provisions, when the employer had knowledge of an accident at work and a potential injury, as noted in Mavity.

In light of Mavity, even if the claimant did not immediately report pain, the Majority should not require the claimant to demand immediate medical treatment after sustaining what he thought was a minor injury that would work itself out. In fact, it is clear that the claimant had every right to believe that his injury was minor, until his spleen actually ruptured. I find that it would have unreasonable for the claimant to have demanded immediate medical attention given that he believed it to be a minor injury. The delayed nature of the claimant's ruptured spleen

is a satisfactory reason for any delay in notice. It is sufficient that the Respondents had knowledge of the accident and the claimant's potential injury.

Finally, it is undisputed that Ark. Code Ann. § 11-9-701(b)(1)(C) specifically provides that a claimant's failure to give notice of an injury is excused if the Commission finds some satisfactory reason that notice could not be given. The Majority completely ignores this statute in finding that the claimant did not give actual notice until December 27, 2005. Claimant sustained what he reasonably believed to be a minor injury. Due to the nature of the injury, he did not think that he needed immediate medical attention. On November 23, 2005 the claimant became so overwhelmed with pain, that he collapsed on the floor, was rushed to the emergency room, and endured a splenectomy. There is no conceivable way that the claimant could have called the Respondents prior to his surgery. Furthermore, Dr. Solomon's testimony that the claimant sustained a delayed rupture corroborates the claimant's testimony that he felt pain immediately after the accident, but it was not immediately unbearable. It was not until the capsule or outside lining of the spleen burst, that the claimant was overcome with pain and collapsed onto the floor. As such, it

would be fundamentally unfair to require the claimant to notify the Respondents while awaiting an emergency surgery. It further stands to reason that having an emergency splenectomy is a satisfactory reason why the claimant did not provide immediate formal notice to the Respondents.

In conclusion, I concur in the Majority's finding that the claimant suffered from a compensable injury on November 14, 2005, and I dissent in the Majority's finding that the claimant did not notify the Respondent of the injury until December 27, 2005. It is clear that the claimant sustained a compensable injury on November 14, 2005, and that he notified his immediate supervisor following the accident. Mr. Magness corroborates the claimant's testimony in that he asked the claimant if he was okay immediately after the accident and later discussed the accident with the claimant. As such, the Respondents had actual knowledge of the accident and the injury. Even though the claimant did not formally report his injuries immediately, the claimant's delay should be excused due to the delayed rupture of the spleen. Furthermore, the claimant should be entitled to receive temporary total disability and medical benefits beginning November 23, 2005. Therefore, I find the Administrative Law Judge's decision should have been

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affirmed in the entirety by the Majority. For these reasons,
I respectfully concur in part and dissent in part._____

PHILIP A. HOOD, Commissioner